

United States
Circuit Court of Appeals
for the Ninth Circuit

Vol 1
~~2315~~
2316

DAILY JOURNAL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of Record


Upon Petition to Review a Decision of the Tax Court of
the United States.

FILED

OCT 30 1942

PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

Dana Latham,

Roland C. Roeschlaub,

1112 Title Guarantee Building, Los Angeles,

Attorneys for Petitioner and Appellant.

For Appellee:

J. P. Wenchel, Chief Counsel,

Alva C. Baird, Division Counsel,

Frank C. Horner, Special Attorney,

E. A. Tonjes, Special Attorney,

Bureau of Internal Revenue, Washington, D. C.,

Attorneys for Appellee. [1*]

*Page numbering appearing at top of page of original Reporter's Transcript.

TRANSCRIPT OF RECORD

UNITED STATES CIRCUIT COURT OF APPEALS
NINTH CIRCUIT

DAILY JOURNAL COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

UPON PETITION TO REVIEW A DECISION OF
THE UNITED STATES BOARD OF
TAX APPEALS

[3]

UNITED STATES BOARD OF TAX APPEALS

Docket No. 105054

Daily Journal Company,

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

PETITION

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency

IT:LA PB-90D dated July 3, 1940, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation, organized under the laws of the State of California with office at 121 North Broadway, Los Angeles, California.
2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on July 3, 1940.

[4]

3. The taxes in controversy are income taxes for the taxable years ended December 31, 1936, December 31, 1937 and December 31, 1938 in the amount of \$917.92 (more or less) and personal holding company surtaxes for the taxable years ended December 31, 1937 and December 31, 1938 in the amount of \$12,796.31 (more or less).
4. That deficiency assessments as to year 1938 are accepted by petitioner in the following amounts:

<u>Income Tax</u>	<u>Surtax</u>	<u>Total</u>
\$73.13	\$2,459.05	\$2,532.18
=====	=====	=====

Deficiency assessments as to the years 1936, 1937, 1938 are contested in the following amounts:

	<u>Income Tax</u>	<u>Surtax</u>	<u>Total</u>
1936	\$ 80.85	—	80.85
1937	409.50	5,616.98	6,026.48
1938	427.57	7,179.33	7,606.90
	=====	=====	=====
Totals	\$917.92	12,796.31	13,714.23
	=====	=====	=====

5. The determination of that portion of additional assessment of taxes as set forth in the said [5] notice of deficiency is based upon the following errors:
- a. The respondent erred in determining that the amount of \$12,000.00 constitutes an excessive salary allowance or other compensation paid for personal services actually rendered by Douglas W. Wilson to Daily Journal Company for each of the taxable years 1936, 1937, 1938.
 - b. The respondent erred in determining that the difference between \$2,000.00, which the respondent claims to have been a reasonable salary allowance for each of the years in question, and \$12,000.00, which was paid by petitioner, did not constitute a dividend distribution in determining income subject to personal holding company surtax.
6. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

[6]

4.

- A. That Douglas W. Wilson was President of Daily Journal Company during the years 1936, 1937 and 1938, and had held that office continuously since May 3, 1917, on which date he was elected to that office.
- B. That on May 3, 1917, by resolution of the directors of petitioner corporation, as contained in minutes of meeting held on that date, the salary of the President was reduced from \$24,000.00 per annum to \$12,000.00 per

annum, and that arrangement has continued to date.

- C. That the services of Douglas W. Wilson, for which an annual compensation of \$12,000.00 was paid in the calendar years 1936, 1937, 1938, were fully worth \$12,000.00 per annum and were rendered to Daily Journal Company, petitioner herein, and that the compensation paid was a duly authorized, ordinary and necessary expense of the business.
- D. That services rendered by Douglas W. Wilson to Consolidated Printing and Publishing Company, a subsidiary corporation, were in fact rendered to petitioner corporation, inasmuch as the main income of petitioner corporation was directly dependent upon the earnings of said subsidiary.
- E. That Douglas W. Wilson held no stock in Consolidated Printing and Publishing Company, a subsidiary corporation, other than one qualifying share, and that there was no motive or inducement for Douglas W. Wilson to render any services to said subsidiary other than to secure an income for the parent company.
- F. That if any portion of the \$12,000.00 paid to Douglas W. Wilson as a salary is disallowed for any of the taxable years, then the disallowed portion constitutes a dividend paid pro-rata to or for the benefit of all the shareholders but by the orders of the shareholders other than Douglas W. Wilson the amounts to which they were entitled were paid to him.

[8] Wherefore the petitioner prays that this Board may hear the proceeding and disallow the deficiency as asserted by the Commissioner, except in so far as said deficiency is admitted.

The petitioner further requests that a hearing may be had in the case in the City of Los Angeles, California.

Walter C. Wright
Walter C. Wright
Counsel for Petitioner
510 South Spring Street
Los Angeles, California

State of California
County of Los Angeles—ss.

William W. Roe, being duly sworn, says that he is Secretary of Daily Journal Company, petitioner corporation, that he is duly authorized to verify the foregoing petition, that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated upon information and belief, and those facts he believes to be true.

William W. Roe

Subscribed and sworn to before me this 26th day of Sept., 1940.

[Seal]

Chas. D. Roe

Notary Public in and for said
County and State.

[9]

EXHIBIT "A"

[10]

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Twelfth Floor

U. S. Post Office and Courthouse
LOS ANGELES, CALIF.

Office of
INTERNAL REVENUE AGENT IN CHARGE
Los Angeles Division

IT:LA

PB-90D

July 3, 1940

Daily Journal Company,
121 North Broadway,
Los Angeles, California.

Sirs:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1936, December 31, 1937, and December 31, 1938, discloses a deficiency of \$991.05, and that the determination of your personal holding company surtax liability for the taxable years ended December 31, 1937, and December 31, 1938, discloses a deficiency of \$15,255.36, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiencies mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a re-determination of the deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Internal Revenue Agent in Charge, Los Angeles, California, for the attention of IT:LA:FC. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

Guy T. Helvering,

Commissioner,

By

GEORGE D. MARTIN

Internal Revenue Agent in Charge.

Enclosures:

Statement.

Form of waiver.

[11]

STATEMENT

IT:LA
PB-90DDaily Journal Company,
121 North Broadway,
Los Angeles, California.Tax Liability for the Taxable Years Ended
December 31, 1936,
December 31, 1937
and
December 31, 1938

Year	Liability	Assessed	Deficiency
	<u>Income Tax</u>		
1936	\$ 80.85	None	\$ 80.85
1937	409.50	None	409.50
1938	753.28	\$252.58	500.70
	<hr/>	<hr/>	<hr/>
Totals	\$ 1,243.63	\$252.58	\$ 991.05

Personal Holding Company Surtax

1937	\$ 5,616.98	None	\$ 5,616.98
1938	9,638.38	None	9,638.38
	<hr/>	<hr/>	<hr/>
Totals	\$15,255.36	None	\$15,255.36

In making this determination of your income tax and personal holding company surtax liability, careful consideration has been given to the report of examination dated December 12, 1939, to your protests dated January 27 and May 18, 1940, and to the statements made at the conferences held on February 21 and May 20, 1940.

It is held that the amount of \$2,000.00 constitutes a reasonable salary allowance or other compensation paid for personal services actually rendered to you by Douglas W. Wilson for each of the taxable years 1936, 1937 and 1938. Section 23(a), Revenue Acts of 1936 and 1938. Since you claimed a deduction in your return for each of these taxable years in the amount of \$12,000.00, the amount of \$10,000.00 is disallowed for each of these taxable years.

[12]

- 2 -

Daily Journal Company.

Statement.

If you do not acquiesce in all of the adjustments making up the deficiencies indicated, but desire to stop the accumulation of interest on that part of the deficiencies resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amounts of the deficiencies you desire to have assessed at once. The execution of the form for the agreed portion of the deficiencies will not deprive you of your right to petition the United States Board of Tax Appeals for a redetermination of the deficiencies.

A copy of this letter and statement has been mailed to your representative, Mr. Walter C. Wright, 510 South Spring Street, Los Angeles, California, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1936

Net Income as disclosed by return	\$18,849.42
Unallowable deduction:	
(a) Excessive salary	10,000.00
	<hr/>
Total	\$28,849.42
Additional deduction:	
(b) Cancellation of bond	1,000.00
	<hr/>
Net income adjusted	\$27,849.42
[13]	

- 3 -

Daily Journal Company. Statement.

EXPLANATION OF ADJUSTMENTS

(a) For the reason stated above the excessive salary deduction in the amount of \$10,000.00 is disallowed.

(b) During the taxable year a bond of David P. Stone Company, which cost you \$1,000.00, was cancelled upon the payment to you of \$175.00. You included the latter amount in your gross income but did not deduct the loss sustained. Accordingly a deduction of \$1,000.00 is allowed.

COMPUTATION OF INCOME TAX

Taxable Year Ended December 31, 1936

Normal Tax

Taxable net income	\$27,849.42
Less: Dividends received credit, 85% of \$31,575.12	26,838.85
	<hr/>
Normal tax net income	\$ 1,010.57

Normal tax:

8% of \$1,010.57 \$80.85

Total normal tax \$80.85

Surtax on Undistributed Profits

Taxable net income \$27,849.42

Less: Normal tax 80.85

Adjusted net income \$27,768.57

Less: Dividends paid credit 33,000.00

Undistributed net income None

Surtax None

Total surtax None

Total normal tax \$80.85

Total income tax (normal tax and surtax) \$80.85

Income tax assessed (normal tax and surtax):

Original, account No. 851738 None

Deficiency of income tax \$80.85

[14]

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Daily Journal Company.

Statement.

ADJUSTMENT TO NET INCOME

Taxable Year Ended December 31, 1937

Net income as disclosed by return \$27,165.47

Unallowable deduction:

Excessive salary 10,000.00

Net income adjusted \$37,165.47

EXPLANATION OF ADJUSTMENT

For the reason previously stated the excessive salary deduction of \$10,000.00 is disallowed.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1937

INCOME TAX

Normal Tax

Taxable net income		\$37,165.47
Less: Dividends received credit, 85% of \$40,735.00		34,624.75
		<hr/>
Normal tax net income		\$ 2,540.72
Normal tax:		
8% of \$2,000.00	\$160.00	
11% of \$ 540.72	59.48	
	<hr/>	
Total Normal Tax		\$ 219.48
[15]		

- 5 -

Daily Journal Company. Statement.

INCOME TAX (Continued)

Surtax on Undistributed Profits

Taxable net income		\$37,165.47
Less: Normal tax		219.48
		<hr/>
Adjusted net income		\$36,945.99
Less: Dividends paid credit:		
Dividends paid during the taxable year	\$29,000.00	
Dividend carry-over from preceding taxable year	5,231.43	34,231.43
	<hr/>	<hr/>
Undistributed net income		\$ 2,714.56

Surtax:

7% of \$2,714.56 \$ 190.02

Total surtax \$ 190.02

Total normal tax 219.48

Total income tax (normal tax and surtax) \$ 409.50

Income tax assessed (normal tax and surtax):

Original, account No. 852608 None

Deficiency of income tax \$ 409.50

[16]

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Daily Journal Company.

Statement.

PERSONAL HOLDING COMPANY SURTAX

Taxable net income \$37,165.47

Less: Federal income tax 409.50

Adjusted net income \$36,755.97

Less: Dividends paid credit 29,000.00

Undistributed adjusted net income \$ 7,755.97

Personal holding company surtax:

65% of \$2,000.00 \$1,300.00

75% of 5,755.97 4,316.98

Total personal holding company surtax \$ 5,616.98

Personal holding company surtax assessed:

Original, account No. 880134 None

Deficiency of personal holding company surtax \$ 5,616.98

ADJUSTMENTS TO NET INCOME

Taxable Year Ended December 31, 1938

Net income as disclosed by return		\$13,471.12
Unallowable deductions:		
(a) Excessive salary	\$10,000.00	
(b) Bad debts	3,900.00	13,900.00
	<hr/>	<hr/>
Net income adjusted		\$27,371.12

EXPLANATION OF ADJUSTMENTS

(a) For the reason previously stated the excessive salary deduction of \$10,000.00 is disallowed.

(b) No ascertainment of worthlessness was made within the taxable year within the meaning of section 23(k) of the Revenue Act of 1938 with respect to \$3,900.00 bonds, claimed in your return as bad debts. The deduction claimed is therefore disallowed.

[17]

- 7 -

Daily Journal Company.

Statement.

COMPUTATION OF TAX

Taxable Year Ended December 31, 1938

Income Tax

Tax under General Rule

Taxable net income		\$27,371.12
Adjusted net income		\$27,371.12
Tentative tax: 19% of \$27,371.12		\$ 5,200.51
Less: 16½% of 85% of \$27,371.12		
dividends received credit	\$3,838.80	
2½% of \$13,500.00		
dividends paid credit	337.50	4,176.30
	<hr/>	<hr/>
Total income tax under general rule		1,024.21

Alternative Tax

Taxable net income		\$27,371.12
First division income		\$25,000.00
Second division income		\$ 2,371.12
Tax on first division:		
First division income	\$25,000.00	
Less: 85% of dividends received, not in excess of 85% of first division income	21,250.00	
		<hr/>
Special class net income	\$ 3,750.00	
Tax at 12½% on \$3,750.00	\$ 468.75	
Total tax on first division		\$ 468.75
Tax on second division:		
Second division income	\$ 2,371.12	
Dividends received allocated to second division	2,371.12	
Tax at 12% on \$2,371.12	\$ 284.53	
Total tax on second division		\$ 284.53
		<hr/>
Total income tax under alternative rule		\$ 753.28
Correct income tax liability		\$ 753.28
Income tax assessed:		
Original, account No. 410663		252.58
		<hr/>
Deficiency of income tax		\$ 500.70

[18]

- 8 -

Daily Journal Company, Statement.

PERSONAL HOLDING COMPANY SURTAX

Taxable net income	\$27,371.12
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Less: Federal income tax	753.28
--------------------------	--------

Title 1A net income	\$26,617.84
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Less: Dividends paid credit	13,500.00
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Undistributed Title 1A net income	\$13,117.84
-----------------------------------	-------------

Personal holding company surtax:

65% of \$ 2,000.00	\$1,300.00
--------------------	------------

75% of 11,117.84	8,338.38
------------------	----------

Total personal holding company surtax	\$ 9,638.38
---------------------------------------	-------------

Personal holding company surtax assessed:

Original, account No. 880169	None
------------------------------	------

Deficiency of personal holding company surtax \$ 9,638.38

[Stamped]: United States Board of Tax Appeals,
Oct. 2, 1940.

[19]

UNITED STATES BOARD OF TAX APPEALS

Docket No. 105054

Daily Journal Company,

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent.

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar years 1936, 1937 and 1938, and personal holding company surtaxes for the years 1937 and 1938; denies remainder of the allegations contained in paragraph 3 of the petition.

4. Respondent neither admits nor denies the allegations contained in paragraph 4 of the petition.

5. Denies the allegations of error contained in subparagraphs (a) and (b) of paragraph 5 of the petition.

6. (a) Admits the allegations of fact contained in subparagraph (a) of paragraph 6 of the petition.

[20] (b) to (f), inclusive. Denies the allegations contained in subparagraphs (b) to (f), inclusive, of paragraph 6 of the petition.

7. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

Signed J. P. Wenchel
FTH

J. P. WENCHEL,
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

Alva C. Baird,
Division Counsel.

Frank T. Horner,
E. A. Tonjes,
Special Attorneys,
Bureau of Internal Revenue.

EAT/fmt 11/19/40

[Stamped] Received Nov. 26, 1940. U. S. Board of
Tax Appeals.

Filed Nov. 26, 1940. United States Board of Tax
Appeals.

UNITED STATES BOARD OF TAX APPEALS

Docket No. 105054

Daily Journal Company,

Petitioner,

v.

Commissioner of Internal Revenue,

Respondent,

AMENDMENTS TO PETITION

Petitioner in above cited case desires to amend its petition in the following particulars:

To amend Paragraph 3 to read as follows:

The taxes in controversy are income taxes for the taxable years ended December 31, 1936, December 31, 1937 and December 31, 1938 in the amount of \$938.85 (more or less) and personal holding company surtaxes for the taxable years ended December 31, 1937 and December 31, 1938 in the amount of \$15,255.36 (more or less).

[22] To amend Paragraph 4 to read as follows:

That deficiency assessments as to year 1938 are accepted by petitioner in the following amounts:

<u>Income Tax</u>	<u>Total</u>
\$52.50	\$52.50
=====	=====

Deficiency assessments as to the years 1936, 1937, 1938 are contested in the following amounts:

	<u>Income Tax</u>	<u>Surtax</u>	<u>Total</u>
1936	\$ 80.85	—	80.85
1937	409.50	5,616.98	6,026.48
1938	448.50	9,638.38	10,086.88
	=====	=====	=====
Totals	\$938.85	15,255.36	16,194.21
	=====	=====	=====

To add Paragraphs 5c and 5d:

- 5c. The respondent erred in failing to allow a capital loss of \$930.00 on the exchange of a bond in Breakers Hotel.
- 5d. The respondent erred in proposing to assess excess profits tax upon any amounts claimed by respondent to have been unlawfully deducted from income by petitioner in the years 1937 and 1938.

[23] To add Paragraphs 6G and 6H:

- 6G. That in 1929 petitioner purchased for \$1,000.00 a bond in Breakers Hotel. This bond had a fair market value on January 1, 1938. In the year 1938 petitioner exchanged the bond for 10 shares of stock of 200 East Ocean Boulevard Company in a realizing exchange; said stock having a total value of \$70.00. Petitioner realized capital loss of \$930.00 which is fully deductible.
- 6H. That petitioner corporation has consistently distributed all of its earnings: that it has never been availed of for accumulating earnings: that the legislative history behind the Personal Holding Company surtax law demonstrates the intention of the statute to be the prevention of the accumulation of surplus earnings: that to impose the tax upon deductions erroneously made in the preparation of tax returns would be to misinterpret the intention of the law.

Petition as thus amended is presented in the following:

[24] AMENDED PETITION

The above named petitioner hereby petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency IT:LA PB-90D dated July 3, 1940, and as a basis of its proceeding alleges as follows:

1. The petitioner is a corporation, organized under the laws of the State of California with office at 121 North Broadway, Los Angeles, California.
2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on July 3, 1940.
3. The taxes in controversy are income taxes for the taxable years ended December 31, 1936, December 31, 1937 and December 31, 1938 in the amount of \$938.85 (more or less) and personal holding company surtaxes for the taxable years ended December 31, 1937 and December 31, 1938 in the amount of \$15,255.36 (more or less).

[25]

4. That deficiency assessments as to year 1938 are accepted by petitioner in the following amounts:

<u>Income Tax</u>	<u>Total</u>
\$52.50	\$52.50
<u> </u>	<u> </u>

Deficiency assessments as to the years 1936, 1937, 1938 are contested in the following amounts:

	<u>Income Tax</u>	<u>Surtax</u>	<u>Total</u>
1936	\$ 80.85	—	80.85
1937	409.50	5,616.98	6,026.48
1938	448.50	9,638.38	10,086.88
	<u> </u>	<u> </u>	<u> </u>
Totals	\$938.85	15,255.36	16,194.21
	<u> </u>	<u> </u>	<u> </u>

5. The determination of that portion of additional assessment of taxes as set forth in the said notice of deficiency is based upon the following errors:

- a. The respondent erred in determining that the amount of \$12,000.00 constitutes an excessive salary allowance or other compensation paid for personal services actually rendered by Douglas W. Wilson to Daily Journal [26] Company for each of the taxable years 1936, 1937, 1938.
- b. The respondent erred in determining that the difference between \$2,000.00, which the respondent claims to have been a reasonable salary allowance for each of the years in question, and \$12,000.00, which was paid by petitioner, did not constitute a dividend distribution in determining income subject to personal holding company surtax.
- c. The respondent erred in failing to allow a capital loss of \$930.00 on the exchange of a bond in Breakers Hotel.
- d. The respondent erred in proposing to assess excess profits tax upon any amounts claimed by respondent to have been unlawfully deducted from income by petitioner in the years 1937 and 1938.

6. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

[27]

- A. That Douglas W. Wilson was President of Daily Journal Company during the years 1936, 1937 and 1938, and had held that of-

fice continuously since May 3, 1917, on which date he was elected to that office.

- B. That on May 3, 1917, by resolution of the directors of petitioner corporation, as contained in minutes of meeting held on that date, the salary of the President was reduced from \$24,000.00 per annum to \$12,000.00 per annum, and that arrangement has continued to date.
- C. That the services of Douglas W. Wilson, for which an annual compensation of \$12,000.00 was paid in the calendar years 1936, 1937, 1938, were fully worth \$12,000.00 per annum and were rendered to Daily Journal Company, petitioner herein, and that the compensation paid was a duly authorized, ordinary and necessary expense of the business.
- D. That services rendered by Douglas W. Wilson to Consolidated Printing and Pub- [28] lishing Company, a subsidiary corporation, were in fact rendered to petitioner corporation, inasmuch as the main income of petitioner corporation was directly dependent upon the earnings of said subsidiary.
- E. That Douglas W. Wilson held no stock in Consolidated Printing and Publishing Company, a subsidiary corporation, other than one qualifying share, and that there was no motive or inducement for Douglas W. Wilson to render any services to said subsidiary other than to secure an income for the parent company.

- F. That if any portion of the \$12,000.00 paid to Douglas W. Wilson as a salary is disallowed for any of the taxable years, then the disallowed portion constitutes a dividend paid pro-rata to or for the benefit of all the shareholders, but by the orders of the shareholders, other than Douglas W. Wilson the amounts to which they were entitled were paid to him.

[29]

- G. That in 1929 petitioner purchased for \$1,000.00 a bond in Breakers Hotel. This bond had a fair market value on January 1, 1938. In the year 1938 petitioner exchanged the bond for 10 shares of stock of 200 East Ocean Boulevard Company in a realizing exchange; said stock having a total value of \$70.00. Petitioner realized capital loss of \$930.00 which is fully deductible.

- H. That petitioner corporation has consistently distributed all of its earnings: that it has never been availed of for accumulating earnings: that the legislative history behind the Personal Holding Company surtax law demonstrates the intention of the statute to be the prevention of the accumulation of surplus earnings: that to impose the tax upon deductions erroneously made in the preparation of tax returns would be to misinterpret the intention of the law.

[30] Wherefore the petitioner prays that this Board may hear the proceeding and disallow the deficiency as asserted by the Commissioner, except in so far as said deficiency is admitted.

The petitioner further requests that a hearing may be had in the case in the City of Los Angeles, California.

The petitioner further states that copy of Notice of Deficiency was presented with petition as originally filed.

Walter C. Wright

Walter C. Wright

Counsel for Petitioner

510 South Spring Street

Los Angeles, California

State of California

County of Los Angeles—ss.

William W. Roe, being duly sworn, says that he is Secretary of Daily Journal Company, petitioner corporation, that he is duly authorized to verify the foregoing petition, that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated upon information and belief, and those facts he believes to be true.

William W. Roe

Subscribed and sworn to before me this 17th day of February, 1941.

[Seal]

Chas. D. Roe

Notary Public in and for said
County and State.

[Stamped]: Lodged Feb. 24, 1941. United States Board of Tax Appeals.

Filed at Hearing Mar. 26, 1941. U. S. Board of Tax Appeals.

[31]

[Title of Board of Tax Appeals and Cause.]

ANSWER TO AMENDED PETITION

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the amended petition of the above-named taxpayer, admits and denies as follows:

1 and 2. Admits the allegations contained in paragraphs 1 and 2 of the amended petition.

3. Admits that the taxes in controversy are income taxes for the calendar years 1936, 1937 and 1938, and personal holding company surtaxes for the years 1937 and 1938; denies the remainder of the allegations contained in paragraph 3 of the amended petition.

4. Respondent neither admits nor denies the allegations contained in paragraph 4 of the amended petition.

5. Denies the allegations of error contained in subparagraphs (a) to (d), inclusive, of paragraph 5 of the amended petition.

6. (A) Admits the allegations contained in subparagraph (A) [32] of paragraph 6 of the amended petition.

(B) to (H), inclusive. Denies the allegations contained in subparagraphs (B) to (H), inclusive, of paragraph 6 of the amended petition.

7. Denies each and every allegation contained in the amended petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

(Signed) J. P. Wenchel

FTH

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

Alva C. Baird,

Division Counsel.

Frank T. Horner,

E. A. Tonjes,

Special Attorneys,

Bureau of Internal Revenue.

EAT/ma 4/23/41

[Stamped]: Received Apr. 29, 1941. U. S. Board of Tax Appeals.

Filed Apr. 29, 1941. United States Board of Tax Appeals

[33]

EXCERPTS FROM THE TRANSCRIPT OF
TESTIMONY
(RE AMENDMENTS TO THE AMENDED
PETITION)

Mr. Latham: I would like at this time to move to amend those provisions of the amended petition to read as follows, if I may do so.

The Member: Dictate it into the record.

Mr. Latham: I move that paragraph 5c of the amended petition be amended so as to read as follows:

"The respondent erred in failing to allow petitioner a deduction of at least \$930 for the calendar year 1938 as a bad debt or loss in connection with the disposition in 1938 of a bond issued by the Long Beach Hotel Company covering property known as the Breakers Hotel."

And petitioner moves that paragraph 6g of the amended petition be amended so as to read as follows:

"That in 1929 petitioner purchased for \$1,000 a bond issued by the Long Beach Hotel Company of Long Beach, California, covering property known as the Breakers Hotel. Said bond was not worthless on December 31, 1937. During the year 1938 petitioner turned in said bond, receiving therefor 10 shares of the stock of the corporation known as 200 East Ocean Boulevard Company, which stock at the time of receipt and on December 31, 1938, had a fair market value of not in excess of \$70. On account of said transaction petitioner sustained a loss

during the calendar year 1938 in an amount of not less than \$930, which loss was deductible as a bad debt or otherwise in determining net taxable income for that year."

The final issue in the proceeding—

The Member: Just a moment. Is there any objection to this amendment:

[34] Mr. Tonjes: I have no objection to the amendment, your Honor. However, I would like to have the record show at this time that respondent denies the allegations of fact contained in the amendment.

The Member: Let the record be considered amended as to the petition as dictated by petitioner's counsel, and that the record be considered as containing a general denial of the amended allegations on the part of respondent.

[35]

[Title of Board of Tax Appeals and Cause.]

Dana Latham, Esq., and Walter C. Wright, Esq., for the petitioner.

W. A. Tonjes, Esq., for the respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION.

Disney: The Commissioner determined deficiencies in income taxes for the years 1936, 1937 and 1938 in the respective amounts of \$80.85, \$409.50 and \$500.70, and personal holding company surtaxes for the years 1937 and 1938 in the respective amounts of \$5,616.98 and \$9,638.38.

The issues presented are the following: (1) What is reasonable compensation to Douglas W. Wilson in each of the years 1936, 1937 and 1938, for the services then performed by him for the petitioner; (2) whether any portion of the amounts paid Wilson in those years by the petitioner and claimed by it as a deduction, as compensation for an officer, a portion of which was [36] disallowed by the respondent, constitutes a distribution of dividend; and (3) did the petitioner sustain a deductible loss, and if so, the amount thereof, on the exchange of a Breakers Hotel \$1,000 bond for 10 shares of the capital stock of 200 East Ocean Boulevard Company?

The evidence consists of the deposition of Douglas W. Wilson, numerous exhibits and a stipulation of certain facts, which are adopted as a part of our findings of fact and so far as deemed material to the determination of the issues, summarized herein.

The petitioner's income tax returns for the taxable years were filed with the Collector at Los Angeles, California.

FINDINGS OF FACT.

In 1893 one Warren Wilson acquired an unincorporated business called the Daily Journal Company which published the Los Angeles Daily Journal, a California daily newspaper which specialized in legal news. In 1895 the enterprise was incorporated under the laws of the State of California, as the Daily Journal Company, which corporation is the petitioner herein.

Warren Wilson acted as president of the corporation from the date of its incorporation to the date of his death, in 1917, at which date and for several years prior thereto, he, as the president thereof, received a salary of \$24,000 a year.

In 1917, after the death of Warren Wilson, Douglas W. Wilson, a son, (hereinafter referred to as "Wilson"), who had been connected with the company for a number of years, was elected president thereof and the salary of the president was by resolution of the stockholders reduced from \$24,000 to \$12,000 a year, at which it has continued, no further corporate action being [37] taken with respect thereto. During the taxable years, 1936-1938, inclusive, petitioner paid no officers' salary to anyone except Wilson.

During the year 1929 and for several years prior thereto there was serious competition in the legal news and advertising business, in which petitioner was engaged, between it and the Los Angeles News, the California Independent, the Los Angeles Review, and the Greater Los Angeles, which unfavorably affected the income of all the said newspapers. At that time the Daily Journal Company, the petitioner, was doing about two-thirds of the available legal publishing business in Los Angeles.

The matter of forming a new corporation was discussed by the representatives of the several newspapers mentioned, resulting in 1929 in the incorporation of the Consolidated Printing & Publishing Company, frequently herein called the "Consolidated," the capital stock of which was issued in exchange for the assets, good will and business of the concerns forming the Consolidated. In connection with the formation of the new corporation, the Consolidated, the parties interested and involved executed certain written agreements indicating therein the general tenor of the proposed consolidation and the interests of the respective parties in the consolidated enterprise.

The parties to the consolidation understood and agreed that Wilson, who was the president of the Daily Journal Company, would become and continue to act, as the president and general manager of the Consolidated. The understanding and agreement described and the execution of the duties imposed on Wilson thereby existed and were discharged by Wilson throughout the years 1936, 1937 and 1938.

After the organization of the Consolidated was completed, the newspapers then composing the same, but continuing under their own names, were [38] printed and published by the Consolidated and this situation existed throughout the years 1936, 1937 and 1938.

The stock of the Consolidated Printing & Publishing Company in 1929 was issued in amounts indicated in the schedule below and in the taxable years was held as also shown therein:

Name of Stockholder	Shares Received upon Consolidation in 1929			Shares Held In 1936, 1937 and 1938		
	"Class A" Pfd.	"Class B" Pfd.	Common	"Class A" Pfd.	"Class B" Pfd.	Common
L. A. Journal Group :						
Daily Journal Company	551	3258	2340		3258	2340
L. A. News Group :						
Legal Publishing Com- pany	161	1086	780			
C. A. Page					387	560
Marietta Page					193	
Chas. A. Page, Jr.					193	
G. V. Allen					157	110
Ethel Allen					156	110
Calif. Independent group :						
Dan W. Green	85	469	272		469	272
Marie McManus	3	63	36		63	36
Elmar Riggins		62	36			
Forrest A. Riggins					62	36
Kathryn G. Lawson		62	36		62	36
Qualifying shares :						
Douglas W. Wilson	1			1		
Wm. W. Roe	1			1		
A. A. McDowell	1			1		
C. A. Page	1					
G. V. Allen	1					
Walter F. Haas	1					
Frank P. Doherty				1		
Treasury Stock				7		
	806	5000	3500	11	5000	3500

1. All but qualifying shares of "Class A" preferred stock were retired in 1932 and 1933 pursuant to the stock contract.

The Legal Publishing Company was owned by C. A. Page and G. V. Allen who in 1930 took over that corporation's stock in Consolidated Printing & Publishing Co. Thereafter, in December 1930, they dissolved the Legal Publishing Company. Subsequently they have distributed part of their holdings to members of their respective families.

[39] The capital stock of the Daily Journal Company, the petitioner, was owned in the years and in the amounts shown in the schedule below :

Name of Stockholder	Shares held on May 3, 1917 ¹	Shares held on July 1 1929 ²	Shares held on March 20 1933 ³		Shares held during 1936, 1937 and 1938	
			Pfd.	Com.	Pfd.	Com.
Warren Wilson	5					
Wm. W. Roe	5	5*	15*	5*	15*	5*
Wm. W. Roe, Trustee ⁴	475					
Mrs. C. M. Wilson	5	5*				
Douglas W. Wilson	10	65	1050	350	1050	350
Walter F. Haas		5*	15*	5*	15*	5*
Cora Wilson Prewett		70				
Clara Wilson Tousley		70	210	70	210	70
Lois Wilson Kinney		70				
Florence Wilson McDowell		70	210	70	210	70
Grace Wilson McLean		70				
Irma Wilson Dorland		70				
	500	500	1500	500	1500	500

1—May 3, 1917, shortly after the death of Warren Wilson, Douglas W. Wilson was elected President of Daily Journal Company.

2—The consolidation in 1929 was effective as of July 1, 1929.

3—On March 20, 1933, Daily Journal Company capitalized \$150,000 of earned surplus and issued a preferred stock dividend of 1500 shares of 17% preferred stock.

4—Trustee for Warren Wilson, Deceased.

*—Qualifying Shares.

The agreement between the petitioner and the Legal Publishing Company, entered into on June 20, 1929, relative to the creation of the Consolidated, provided in part:

It is hereby further covenanted and agreed that the executive officers of said new corporation shall not charge or receive any salary for their services rendered to said corporation unless otherwise ordered by the affirmative vote of all of the members of the Board of Directors of said new corporation.

* * * * *

[40] It is hereby further covenanted and agreed that each of the said contracting parties and the stockholders of said contracting parties so far as the same can be bound by this agreement, will use their best efforts and endeavors to further and promote the business of said new corporation.

During the taxable years 1936, 1937 and 1938 the assets of the petitioner consisted principally of capital stock of the Consolidated Printing & Publishing Company. Petitioner had some cash, accounts and notes receivable, and real estate, none of which required any considerable time or service of Wilson with respect to the management thereof, and reasonable compensation for which was \$2,000 per year, which is not controverted and was allowed as a deduction by the Commissioner in computing petitioner's net taxable income. Practically all the petitioner's income was received from the Consolidated Printing & Publishing Company in the form of dividends on the stock which the petitioner owned therein.

The petitioner in the taxable years owned no printing presses and did not actually print and publish any newspaper. The Los Angeles Daily Journal, however, was printed and published by the Consolidated for the Daily Journal Company.

Wilson, as contemplated by the agreements heretofore referred to and pursuant to instructions of the stockholders and directors of the petitioner, devoted practically all his time during the taxable years to the operation and management of the Daily Journal Company and the other papers constituting the Consolidated, the fair value of the services so rendered to the Consolidated being, as agreed by the parties hereto, not less than \$12,000 per an-

num, which amount was paid by petitioner to Wilson in each of the taxable years. No compensation was paid to Wilson by the Consolidated for his services in managing its affairs. [41]

After the incorporation and organization of the Consolidated, the offices of the Daily Journal and of its president, Wilson, and of the Consolidated, were in the same building and in the same room. The name, Consolidated Printing and Publishing Company, does not appear any place at the offices nor has the Consolidated ever had any letterheads or billheads. So far as the general public is concerned, the newspapers forming or constituting the Consolidated are still published as before the consolidation.

At no time during the taxable years did Wilson own any Consolidated stock, other than one qualifying share of Class A.

In computing petitioner's taxable net income for the taxable years, \$10,000 of the \$12,000 paid Wilson by petitioner each year was disallowed by the Commissioner.

During each of the years 1937 and 1938, the petitioner paid to its stockholders all dividends received from Consolidated, after deducting operating expenses, as evidenced by the earned surplus balances at the end of 1937 and 1938 of \$558.41 and \$504.53, respectively.

During the years 1937 and 1938 petitioner had gross incomes of \$40,851.75 and \$26,772.51, respectively, and after paying in each of said years \$12,000 as salary to Wilson and other operating expenses, the petitioner paid out in 1937 and 1938 dividends totaling \$29,000 and \$13,500, respectively.

The following facts have been stipulated and agreed upon:

The Long Beach Hotel Company, a Delaware corporation, was organized on April 22, 1929.

As of May 1, 1929, this corporation issued \$1,150,000.00 of "Breakers Hotel First Mortgage Fee 6-1/2% Sinking Fund Gold Bonds" (hereinafter referred to as "Bonds") secured, under a trust indenture, by the hotel properties comprising the Breakers Hotel in Long Beach, California.

[42] On May 24, 1929, petitioner purchased Breakers Hotel First Mortgage Fee 6-1/2% Sinking Fund Gold Bond No. M-1312, at a cost to petitioner of \$1,000.00. This Bond was one of the bonds heretofore referred to.

As of July 18, 1938, the date of a reorganization plan, to be hereinafter referred to, there was outstanding bonds in the principal amount of \$1,141,375.00.

On November 1, 1931, the interest payments due on the bonds were defaulted. On May 1, 1932, the sinking fund requirements with respect to the bonds were defaulted.

On November 17, 1931, the trustee under the bond indenture took possession of the property and operated it until November 15, 1933, when the hotel was closed. Subsequent to the closing of the hotel, trustee maintained the fixtures in good condition.

After default as above set forth a "First Mortgage Bondholder's Committee" (hereinafter referred to as "Committee") was organized to protect the interests of the holders of the bonds. The Committee drew up a Deposit Agreement covering the terms of

the deposit of the bonds with the Committee, which Deposit Agreement was dated October 26, 1931.

* * *

Among other things, the Deposit Agreement provided for the issuance of a "Certificate of Deposit" upon the deposit of a bond or bonds by a bondholder.

As of July 18, 1938, a Reorganization Plan (hereinafter referred to as "Plan") was submitted by the Committee to the bondholders. * * *

On August 18, 1938, and pursuant to the Plan, petitioner deposited the said Bond M-1312 with the Title Insurance and Trust Company in Los Angeles, a Sub-depositary under the said Deposit Agreement, and received in return therefor Certificate of Deposit No. 1086 * * *

Pursuant to the Plan as of October 5, 1938, there were on deposit with the Sub-depositary, Title Insurance and Trust Company, bonds in the principal amount of \$1,024,500.00. In addition, the Sub-depositary had received notices of dissent from the Plan with respect to bonds, in the principal amount of \$4,500.00.

Pursuant to the Plan, a California corporation, "200 East Ocean Boulevard Company" (hereinafter referred to as the "new corporation") was organized to buy the property of the old company at a Trustee's Sale.

[43] On October 5, 1938, and pursuant to the authority of the California Corporation Commissioner, the new corporation issued its capital stock in exchange for the bonds which had been deposited with the Sub-depositary, which bonds were transferred

and assigned to the new corporation by the Committee. * * * The trustee under the trust indenture securing the bonds sold the property at a public sale on October 5, 1938, to the new corporation. The new corporation applied the bonds, which it had received in exchange for its own stock, against the bid price. The stock of the new corporation was issued to the old bondholders in exchange for their Certificates of Deposits which they had previously received upon depositing the bonds with the Committee. Ten (10) shares of stock were issued with respect to each Certificate of Deposit representing bonds in the principal amount of \$1,000.00.

* * * * *

On November 16, 1938, petitioner surrendered the said Certificate of Deposit No. 1086, and received therefor Certificate No. 733, representing ten (10) shares of capital stock of the new corporation. The market price and fair market value of the capital stock of the new corporation on November 16, 1938 and on December 31, 1938, was \$5.00 per share.

* * * * *

On December 31, 1938, petitioner charged off its \$1,000.00 investment in Bond M-1312 as a bad debt loss, and deducted the same as bad debt loss on its 1938 income tax return. Respondent has disallowed this deduction in its entirety.

OPINION.

The record shows that the petitioner, Daily Journal Company, in the taxable years involved owned approximately two-thirds of the stock of the Consolidated Printing & Publishing Company. It further shows that the services which Douglas W. Wilson performed for and as the executive head of the Consolidated, during the taxable years involved, at the instance and under the instructions of the Daily Journal Company, pursuant to the understanding and agreement of the parties forming the Consolidated, were of the value of not less than \$12,000 in each of the taxable years. It is shown that each of [44] the newspapers forming the Consolidated and owning stock therein received dividends therefrom which resulted from Wilson's management and services. The first issue for our determination is: In computing petitioner's net income, what amount may be deducted for the services rendered as stated in each of the taxable years by the petitioner, as reasonable, ordinary and necessary business expense, or compensation to Wilson? That issue, when analyzed, resolves itself into the question: May the petitioner claim as a deduction \$12,000 paid by it to Wilson in each of the taxable years, for the services he in fact performed for Consolidated by direction of petitioner, who indirectly received benefit therefrom by reason of being a stockholder in Consolidated and receiving dividend distributions therefrom? In other words, may one corporation claim as a deduction, the cost to it and value of services rendered directly to another corporation, when the services performed only benefit the former indirectly in the way or manner above stated?

The evidence shows that Wilson was the president of two corporations, the Daily Journal Company and the Con-

solidated Printing & Publishing Company, and that the services he performed for each and the businesses of each were in some material respects different. The Daily Journal Company in the taxable years in issue did not itself print and publish the Los Angeles Daily Journal; in fact it owned no printing presses, and the record shows that in the conduct and operation of its affairs, distinct and separate from the management of the Consolidated Printing & Publishing Company, comparatively little time and attention of Wilson was demanded, required or rendered. For the services so rendered to the Daily Journal Company by Wilson in the taxable years, the respondent, in computing petitioner's taxable net income, allowed as a deduction in each of the taxable years the sum of \$2,000 and we find no evidence [45] in the record overthrowing the presumption of the correctness of the respondent's determination in that respect and the same is accordingly approved.

We are further of the opinion, find and hold that the time and services devoted by Wilson, as the president and general manager of the Consolidated, to its affairs in the taxable years were of the value of \$12,000 in each of said years as the parties hereto have agreed. The business of the Consolidated Printing & Publishing Company in part was to print and publish the newspapers composing the Consolidated or to have the same done, and to effect the same appropriated substantially all of the time and services of its president and general manager, Wilson. The record, however, does not, in our opinion, show that in the taxable years, 1936, 1937 and 1938, Consolidated was incapable of managing and conducting its own affairs through its board of directors.

The petitioner did not have complete domination and control of Consolidated; in fact, petitioner was the holder

of only approximately two-thirds of the Consolidated stock. With respect to the authorization of officers' salaries of Consolidated, the petitioner had practically no control, since said salaries, if any, required the unanimous affirmative vote of Consolidated's board of directors. Whether the expenditures or payments made by petitioner to Wilson for his services rendered directly to Consolidated to increase its profits or income, which resulted in the petitioner receiving larger dividends on the stock it held in Consolidated, may reasonably be considered ordinary and necessary expenses incurred by petitioner in carrying on its business, which was of the character heretofore indicated, is the question presented.

That the \$12,000 salary payment by petitioner to Wilson in each of the taxable years, in the circumstances shown, was not an ordinary expense of [46] petitioner in the carrying on of its business, in the usual sense and meaning of the statute, is virtually conceded by petitioner's counsel, who at the hearing herein, in part, stated: "With regard to the salary issue, I might add this is not the ordinary salary case by any manner or means. I know of no case on the books that is any where close to the issue that we have." We think that *W. M. Ritter Lumber Co.*, 3 B. T. A. 231 (272), and *Security First National Bank of Los Angeles, Executor*, 28 B. T. A. 289 (319), offer analogy to the present case. In the former we disallowed deduction, as ordinary and necessary expenses, of payments made by the petitioner for services rendered another corporation engaged in selling petitioner's products. We pointed out that the payees were not employees of the petitioner, which was under no legal obligation to pay them. The latter case involved payments made by the petitioner's decedent to an employee

of a corporation, in which petitioner's decedent was a stockholder. We held that the amounts were not deductible as ordinary and necessary business expense. See also *Thomas H. Martin* (1927), 7 B. T. A. 72; *affd.* (C.C.A. 8, 1938), 28 Fed. (2d) 748; *Welch v. Helvering*, (1933), 290 U. S. 111.

The circumstances and facts disclosed by the record, in our opinion—and we so hold and determine—show that the petitioner and the Consolidated are distinct and separate corporate entities and that they are such may not be disregarded or ignored. We are further of the opinion, hold and determine that the payment of \$12,000 to Wilson in each of the taxable years by petitioner as compensation or salary for services rendered directly to and for Consolidated may not be considered ordinary and necessary expenses of carrying on business by petitioner and deducted as such in computing petitioner's taxable net income. [47]

Under the circumstances here involved, we can not agree with petitioner's view that its business was that of operation and management of Consolidated. Consolidated was owned, through stock held in the usual manner, by the petitioner and others, and the income of each therefrom was merely through dividends paid. We think it clear that the petitioner rendered no such services for Consolidated as to justify deducting, as ordinary and necessary expense of trade or business, the expense incurred by petitioner. The payments made were "in the nature of an additional investment," as we said in *Pierre S. du Pont*, 37 B. T. A. 1198 (1276), where a stockholder made payments in order to benefit a corporation in which he was a stockholder. *Menihan v. Commissioner*, 79 Fed. (2d) 304; *certiorari denied*, 296 U. S. 651, is to the same

general effect. Obviously this is not an ordinary business expense. "There is nothing ordinary in the stimulus evoking it, and none in the response." *Welch v. Helvering*, *supra*. The payments inured to the benefit of the petitioner only indirectly, as a stockholder in Consolidated, and only in proportion to stockholdings, for they were, except as to amount of stock owned, equally beneficial to the others owning stock in Consolidated.

A clear statement of the law touching the setting aside or disregard of corporate entities and citation of numerous authorities bearing on the subject are given in *Inland Development Co. v. Commissioner*, 120 Fed. (2d) 986 (C.C.A. 10), decided in June 1941.

The petitioner, in our opinion, is not entitled to any dividends-paid credit in the computation of its tax liability since, even though the excess salary be considered as a dividend, clearly it is not "pro rata, equal in amount, and with no preference to any share of stock as compared with other [48] shares of the same class." Sections 27 (g) and 351 (b) (2) (C), Revenue Act of 1936, and sections 27 (h) and 405 (a), Revenue Act of 1938.

The third and last issue is: Is the petitioner entitled to a deduction—as a bad debt, as claimed on its return or as a loss arising from a transaction entered into for profit as asserted might be allowed by amendment to petition—upon the exchange in 1938 of a Breakers Hotel \$1,000 bond for ten shares of the capital stock of 200 East Ocean Boulevard Company.

The determination of this issue, in our opinion, does not depend on whether or not that transaction constituted or resulted in a reorganization, since the issue is covered by section 112 (b) (5) of the Revenue Act of 1938, and

there was, regardless of reorganization, a transfer of property solely in exchange for corporate stock, and immediately thereafter the transferors were in control of the corporation-transferee. Stock received was in proportion to interest formerly held. Therefore no gain or loss is recognizable. See Frederick L. Leckie, (1938), 37 B. T. A. 252, at page 257.

The petitioner, in our opinion, sustained no loss by reason of the exchange of a \$1,000 bond of the Breakers Hotel for the ten shares of the capital stock of 200 East Ocean Boulevard Company and the determination of the respondent with respect thereto is correct and accordingly approved.

Decision will be entered for the respondent.

ENTER:

[Stamped]: Entered May 11, 1942. [49]

[Title of Board of Tax Appeals and Cause.]

DECISION

Pursuant to the determination of the Board, as set forth in its Memorandum Findings of Fact and Opinion, entered May 11, 1942, it is

Ordered and Decided: That there are deficiencies in income taxes for the years 1936, 1937 and 1938 in the respective amounts of \$80.85, \$409.50 and \$500.70, and personal holding company surtaxes for the years 1937 and 1938 in the respective amounts of \$5,616.98 and \$9,638.38.

Enter:

(Signed) R. L. DISNEY
Member.

[Stamped]: Entered May 12, 1942.

[50]

[Written]: Sep - 9/22/41 - Los Angeles

[Title of Board of Tax Appeals and Cause.]

Deposition of Douglas W. Wilson, taken on behalf of Petitioner, at Suite 1118 Title Guarantee Building, 411 West Fifth Street, Los Angeles, California, at 9:30 o'clock a.m., Friday, September 5, 1941, before Marie O. Zellner, a Notary Public within and for the County of Los Angeles, and State of California, pursuant to the annexed stipulation.

Appearances of Counsel:

Dana Latham, Esq. and Ronald C. Roeschlaub, Esq.,
of the office of Latham & Watkins, appearing
on behalf of Petitioner.

Walter C. Wright, Esq., Certified Public Accountant,
also appearing on behalf of Petitioner.

E. A. Tonjes, Esq. (Honorable J. P. Wenchel, Chief
Counsel, Bureau of Internal Revenue), appearing
on behalf of the Commissioner of Internal
Revenue, Respondent.

[Stamped]: Received Sep. 15, 1941. U. S. Board
of Tax Appeals.

Filed Sep. 15, 1941. United States Board of Tax Appeals. Dkt. V. G. M.

Filed at hearing Sep. 21, 1941. U. S. Board of Tax Appeals.

[51]

CERTIFICATE ON RETURN

To the United States Board of Tax Appeals:

I, Marie G. Zellner, the person named in the foregoing stipulation to take deposition, hereby certify:

1. That I proceeded, on the 5th day of September, A. D. 1941, at the offices of Latham & Watkins, in the City of Los Angeles, State of California, at 9:30 o'clock a. m., under the said stipulation and in the presence of Messrs. Dana Latham, Ronald C. Roeschlaub, and Walter C. Wright, and Mr. E. A. Tonjes, the counsel of the respective parties, to take the following deposition, viz:

Douglas W. Wilson, a witness produced on behalf of the petitioner.

2. That the witness was examined under oath at such time, and that the testimony of the witness was taken stenographically and reduced to typewriting by me or under my direction.

3. That after the testimony of the witness had been reduced to writing, the transcript of that testimony was read and signed by the witness in my presence, and that the witness acknowledged before me that his testimony was in all respects truly and correctly transcribed.

4. That, after the signing of the deposition in my presence, no alterations or changes were made therein.

5. That I have no office connection or business employment with the petitioner or his attorneys. [52]

6. That, pursuant to the written requests of the parties, attached hereto, one copy of said deposition has been delivered to Alva C. Baird, Division Counsel, Pacific Division, Technical Staff, 1714 U. S. Post Office and Court House, Los Angeles, California, counsel for respondent; and one copy has been delivered to Mr. Dana Latham, Suite 1112 Title Guarantee Building, 411 West Fifth Street, Los Angeles, California, counsel for petitioner.

Marie G. Zellner,

Notary Public in and for the County
of Los Angeles, State of California.

Room 320 Wilcox Building,
206 South Spring Street,
Los Angeles, California.

My Commission Expires Dec. 27, 1944.

[53]

[Title of Board of Tax Appeals and Cause.]

STIPULATION TO TAKE DEPOSITION
OF DOUGLAS W. WILSON
IN BEHALF OF PETITIONER.

The above-named parties, through their respective counsel, hereby stipulate as follows:

(1) That issue has been joined in the within proceeding.

(2) The deposition of Douglas W. Wilson, whose business address is 121 North Broadway, Los Angeles, California, a witness in behalf of petitioner, may be taken at 9:30 A. M., Friday, September 5, 1941 at Suite 1112 Title Guarantee Building, 411 West Fifth Street, Los Angeles, California before Marie G. Zellner, a Notary Public in and for the County of Los Angeles, State of California, and an officer authorized to administer oaths. [54]

(3) That the deposition covered by this stipulation shall in all respects be governed by the applicable provisions of Rule 45 of the United States Board of Tax Appeals.

Dated this 5th day of September, 1941.

Dana Latham

Dana Latham

Counsel for Petitioner

J. P. Wenchel

F T H

Counsel for Respondent

[55]

[Title of Board of Tax Appeals and Cause.]

REQUEST FOR COPY OF DEPOSITION

It is hereby requested that one copy of the deposition of Douglas W. Wilson be delivered to Alva C. Baird, Division Counsel, Pacific Division, Technical Staff, 1714 U. S. Post Office and Court House, Los Angeles, California.

This request is made pursuant to section (j) of rule 45 of the Rules of Practice of the United States Board of Tax Appeals.

J. P. Wenchel

F T H

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

Alva C. Baird,

Division Counsel.

Frank T. Horner,

E. A. Tonjes,

Special Attorneys,

Bureau of Internal Revenue.

[56]

Paul R. Watkins

Dana Latham

A. R. Kimbrough

Richard W. Lund

Ronald C. Roeschlaub

Austin H. Peck, Jr.

Associate Counsel

Fletcher Dobyns

LATHAM & WATKINS

Attorneys at Law

Suite 1112 Title Guarantee Building

Mutual 5271

Los Angeles

September 4, 1941

Marie G. Zellner,
 Notary Public in and for
 the County of Los Angeles,
 State of California
 206 South Spring Street
 Los Angeles, California

In Re: Daily Journal Company v. Commissioner
 of Internal Revenue, Docket #105054
 Dear Madam:

In accordance with the provisions of Rule 45, subdivision (j), of the United States Board of Tax Appeals, the undersigned, as counsel for the petitioner, respectfully requests that you deliver to him one copy of the deposition of Douglas W. Wilson in lieu of sending such copy to the Board of Tax Appeals as provided by said Rule 45 (j).

Respectfully,

Dana Latham

Counsel for Petitioner

[57]

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(Testimony of Douglas W. Wilson)

[58]

[Title of Board of Tax Appeals and Cause.]

Deposition of Douglas W. Wilson, taken on behalf of Petitioner, at Suite 1112 Title Guarantee Building, 411 West Fifth Street, Los Angeles, California, at 9:30 o'clock a.m., Friday, September 5, 1941, before Marie G. Zellner, a Notary Public within and for the County of Los Angeles and State of California, pursuant to the annexed stipulation.

Appearances of Counsel:

Dana Latham, Esq. and Ronald C. Roeschlaub, Esq. of the office of Latham & Watkins (Suite 1112 Title Guarantee Building, 411 West Fifth Street, Los Angeles, California) appearing on behalf of Petitioner.

Walter C. Wright, Esq., Certified Public Accountant, also appearing on behalf of Petitioner.

E. T. Tonjes, Esq., (Honorable J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue), appearing on behalf of the Commissioner of Internal Revenue, Respondent.

[59]

DOUGLAS W. WILSON,

called as a witness on behalf of the petitioner, being first duly sworn by the Notary, deposed and testified as follows:

Direct Examination

By Mr. Latham:

Q. Will you state your name, please?

A. Douglas W. Wilson.

(Testimony of Douglas W. Wilson)

Q. Your business and residence addresses?

A. Business address, 121 North Broadway; residence, 4758 Haskill Avenue, Encino, California.

Q. The Broadway address is Los Angeles?

A. Yes, that is right.

Q. Your age? A. Fifty-three.

Q. Your occupation?

A. President and general manager of the Consolidated Printing and Publishing Company and president and general manager of the Daily Journal Company.

Q. Those are both California corporations?

A. Yes.

Q. Are you also a director and stockholder of both corporations? A. Yes.

Q. How long have you been associated with the Daily Journal? [60]

A. More or less all my life; that is, off and on since 1906.

Mr. Latham: I might add for the record that hereafter in referring to the corporations I will refer to the Daily Journal Company as the Daily Journal and the Consolidated Printing and Publishing Company as Consolidated.

Q. By Mr. Latham: State, briefly, the history of the Daily Journal Company?

A. The Daily Journal Company—the company itself or the paper?

Q. Well, the business.

A. The paper was started in 1888 by a man named Charles Palm, and which at that time was about the size of two sheets of the present telephone directory. It was purchased in 1893 by my father.

(Testimony of Douglas W. Wilson)

Q. What was the name of your father?

A. Warren Wilson. In 1895 he incorporated the Daily Journal Company.

Q. That is the present company,—

A. That is the present company.

Q. —the Daily Journal Company, that you have just referred to? A. Yes.

Q. Proceed.

A. And it proceeded under his ownership up until the time of the merger of the company into the Consolidated [61] Printing and Publishing Company.

Q. What was the business of the Daily Journal?

A. Well, catering more or less to the legal profession, building and contracting trades, insurance companies, the title and insurance companies, and banks; in other words, all information of value to those different classes of business that was not covered by the metropolitan papers.

Q. It was the publication of a daily newspaper catering to those people? A. That is right.

Q. Who was the first president of the company? A. My father, Warren Wilson.

Q. How long did he continue as president?

A. Up to 1917, at the time of his death.

Q. He was in active charge during that entire period?

A. Yes.

Q. You first went to work for the company in 1906, I believe you stated?

A. In 1906 I took over the management of the circulation department.

Mr. Tonjes: This is still with reference to the Daily Journal?

Mr. Latham: That is right.

(Testimony of Douglas W. Wilson)

Q. By Mr. Latham: Did you subsequently become an officer of the Daily Journal Company? A. Yes.

[62]

Q. When did you first become an officer?

A. In 1917.

Mr. Latham: This is off the record.

(Discussion off the record.)

Q. By Mr. Latham: I show you what purports to be the minutes of a meeting of the board of directors of the Daily Journal Company, dated August 29, 1912. Can you identify those minutes? A. Yes.

Q. Those are the minutes of a meeting of the directors of that company held on the date specified?

A. That is correct.

Mr. Tonjes: What date was that?

Mr. Latham: August 29, 1912.

Q. By Mr. Latham: I read the following excerpt from those minutes:

“Resolved that Douglas Wilson be and he is hereby elected to the office of vice-president and assistant manager of the Daily Journal Company, to have the same powers and duties as the president and manager.”

Did you become vice-president and assistant manager, pursuant to those minutes, on that date?

A. Yes, I did.

Q. Then you were mistaken in stating that you first became an officer in 1917?

A. Yes. I was thinking of the office of president. [63]
I think that occurred in 1917.

Q. Did you subsequently become president of the Daily Journal Company? A. Yes.

(Testimony of Douglas W. Wilson)

Q. When was that?

A. I believe it was 1917, immediately after my father's death.

Q. Have you been president from that date to this?

A. Yes.

Q. How much of your time have you devoted to the affairs of that company, from 1912 to date?

A. All of my time.

Q. Have you received compensation, as president of the Daily Journal Company, from the date of your election in 1917 until the present?

A. Yes.

Q. At what annual rate?

A. \$12,000 a year.

Q. I show you what purports to be original minutes of a special meeting of the stockholders of the Daily Journal Company, held May 3, 1917, and ask you if you can identify that record.

(Handing document to witness.)

A. Yes.

Q. That represents the minutes of the meeting held on that date? [64]

A. That is correct.

Q. And the resolutions shown therein were duly adopted at said meeting?

A. That is correct.

Q. I would like the record to show that said minutes contain, among other things, the following:

"The meeting was called to order by Douglas Wilson, vice-president.

"On motion Douglas Wilson was nominated for president of the Daily Journal Company and William W. Roe for secretary of said company. Balloting was proceeded with and on counting the ballots it was determined that Douglas Wilson was elected president; William W. Roe, secretary."

(Testimony of Douglas W. Wilson)

Said minutes also show the following:

“On motion the salary of the president of the Daily Journal Company was reduced from \$24,000 per annum to \$12,000 per annum.”

So far as you know, has there been any subsequent corporate action taken by the Daily Journal Company with respect to your salary as president? A. None.

Q. So far as you know, that action has never been revoked, rescinded or otherwise altered? A. No.

Q. The salary which you drew in 1936, 1937 and 1938, as president, was pursuant to this original action? [65]

A. That is correct.

Q. I note from the minutes of the 1917 meeting just read, that the president's salary was reduced from \$24,000 to \$12,000. Does that mean that your father had been drawing \$24,000 a year as salary?

A. That is correct.

Q. Were your duties, when you became president in 1917, any different than those formerly performed by your father?

Mr. Tonjes: That is objected to as being immaterial and incompetent and having no bearing on the issues. I would just like to have the record show the objection.

Mr. Latham: Yes. You may answer.

The Witness: They were the same and greatly increased, due to the growth of the corporation and its holdings.

Q. By Mr. Latham: And due to the increased business done by the corporation? A. Yes.

Q. At the time you were elected president in 1917, how much stock of the Daily Journal Company did you own? A. 70 shares.

(Testimony of Douglas W. Wilson)

Q. In 1917?

A. No, I think it was a little after that. My father left the stock to my mother, and she divided it amongst seven children.

Q. Did you own any at the date of your election, if [66] you recall?

A. Qualifying shares, I believe.

Q. Otherwise, you had no actual ownership?

A. No.

Q. Since you became president of the Daily Journal Company in 1917, has the Commissioner of Internal Revenue, or any other governmental agency, ever questioned the reasonableness of the salary paid to you, except with respect to this present proceeding?

Mr. Tonjes: That question is objected to as being incompetent and immaterial, and having no bearing on the issues involved in this proceeding.

The Witness: No.

Q. By Mr. Latham: Between 1917 and 1929 did the business of the Daily Journal Company increase or decrease or remain constant?

A. From 1917 to 1929?

Q. Yes.

Mr. Tonjes: The question is objected to on the ground that the testimony of this witness is not the best evidence as to whether the business increased or decreased.

Mr. Latham: Under the circumstances, the question is withdrawn, with the understanding that specific schedules will be submitted later covering that point.

Q. By Mr. Latham: Throughout this period from 1917 to 1929 you acted as president of the Daily Journal Company [67] and devoted all of your time and energies to its affairs?

A. I did.

(Testimony of Douglas W. Wilson)

Q. You stated that you are also at the present time president and general manager of the Consolidated Printing and Publishing Company? A. Yes.

Mr. Tonjes: When was that company formed?

The Witness: In 1929.

Q. By Mr. Latham: State, briefly, the circumstances leading up to its formation.

A. Well, at that time there was serious competition—

Q. About what time do you refer to?

A. Well, immediately prior to 1929, for the previous four or five years, there was serious competition between The Los Angeles News, The California Independent, the Los Angeles Review and The Greater Los Angeles, all specializing in this one line of publication, and there was price cutting and battles from all different angles.

Q. You mean they were competing with the Daily Journal at that time, that is, in 1929? A. Yes.

Q. Approximately how much of this type of business in Los Angeles and vicinity did the Daily Journal have for itself? A. Of the total amount?

Q. Of the total business available? [68]

A. They had approximately two-thirds.

Q. Now, proceed with the history of the Consolidated Company.

A. We were first approached by Mr. Page of The Los Angeles News, who was our most serious competitor, on the formation of a company to take over the businesses of all of those different newspapers.

Q. Now, the News was published by what and by whom?

A. The Legal Publishing Company.

Q. That was a corporation?

A. That was a corporation.

(Testimony of Douglas W. Wilson)

Q. Owned by whom?

A. C. A. Page and George B. Allen.

Q. Proceed.

A. We discussed his proposal and finally agreed, that is, after meetings with the Daily Journal Company stockholders and directors we agreed to form the Consolidated Printing and Publishing Company and to put the assets and the good will and the tangible assets into the Consolidated Printing and Publishing Company.

Q. Now, the assets, good will, and so forth, of what were to go into the Consolidated?

A. Of The Los Angeles News, the Daily Journal Company and The Greater Los Angeles.

Q. How about the Independent?

A. That deal was made later on, after we made the deal [69] with the Legal Publishing Company.

Q. I show you a document which is entitled, "Petition of Consolidated Printing and Publishing Company to Issue and Sell Stock," addressed to the Corporation Commissioner of the State of California, and ask you if you have ever seen that document before?

A. Yes.

Q. Is that a true copy, so far as you know, of the original application as filed with the Corporation Commissioner?

A. Yes, it is.

Q. Where is the original, if you know?

A. It is either in our office or that is the original there, I don't know which.

Q. The original is probably with the Corporation Commissioner, isn't it?

A. I guess so. The attorneys handled that.

Mr. Latham: In order to show the plan under which the Consolidated Printing and Publishing Company was

(Testimony of Douglas W. Wilson)

organized, I offer at this time as Petitioner's Exhibit A said petition addressed to the Corporation Commissioner, omitting, however, for purposes of brevity the following exhibits attached to said petition, with the understanding that said omitted exhibits will be submitted, should counsel for respondent so request:

Form of stock certificate for Class A, Class B and common stock; [70]

Exhibit A, Articles of Incorporation;

Consolidated Printing and Publishing Company consolidated balance sheet;

Exhibit D and all pages entitled "Inventory"; with the further understanding that this document may be withdrawn and a photostatic copy of the portions offered submitted in lieu thereof.

Is that satisfactory, Mr. Tonjes?

Mr. Tonjes: With respect to the privilege of withdrawing the original of any portion of the document offered in evidence and submitting photostatic copies thereof, the respondent has no objection, but the respondent does object to the introduction of the document just offered on the ground that it is incompetent, irrelevant and immaterial.

(Thereupon the document referred to was marked "Petitioner's Exhibit No. A, 9-5-41," for identification, and the same is attached hereto and made a part hereof.)

Mr. Latham: Let the record show that so far as stock ownership of both the Daily Journal Company and the Consolidated Printing and Publishing Company is concerned, that schedules will be subsequently submitted showing this ownership.

(Testimony of Douglas W. Wilson)

Q. By Mr. Latham: Was the consolidation of the various companies engaged in the legal printing and publishing business in Los Angeles and vicinity in 1929 duly accomplished, as shown by the plan contained in the application to the [71] Corporation Commissioner?

A. Yes.

Q. And the tangible assets and subscription lists, and so forth, of the Daily Journal Company were duly transferred to the Consolidated Printing and Publishing Company?

A. Yes, their good will, their tangible assets, everything but their past accounts receivable and any cash or other holdings that were not needed by the paper for its functions.

Q. Who was the first president of Consolidated?

Mr. Tonjes: That is objected to as being immaterial, and has no probative value in connection with the issues involved in this proceeding.

The Witness: I was.

Q. By Mr. Latham: You have been president and general manager of Consolidated from the date of its organization in 1929 to the present?

A. That is correct.

Q. Do you recall how much of the stock of the Daily Journal Company you personally owned at the date of the consolidation in 1929?

A. I think 70 shares.

Q. Out of a total of how much, issued and outstanding?

A. Of the Daily Journal Company?

Q. Yes.

A. 500 shares. [72]

(Testimony of Douglas W. Wilson)

Q. Who were the other officers of Consolidated upon its formation, other than yourself as president?

Mr. Tonjes: Objected to as being immaterial and irrelevant.

The Witness: Mr. Page, Mr. Haas, Mr. Roe and myself.

Q. By Mr. Latham: Those were men who had been connected with the constituent companies prior to the consolidation? A. Oh, yes.

Q. Approximately how much of the various classes of stock of Consolidated did the Daily Journal Company receive for its various assets, including good will?

A. Two-thirds.

Q. At the time of the consolidation, was there any agreement between the constituent papers with respect to their continuance or discontinuance after the consolidation?

A. They were all continued and still are, except they merged two of the small weeklies into one paper.

Mr. Tonjes: I move that the answer be stricken as not being responsive.

Q. By Mr. Latham: Was there any agreement or understanding at the time of the consolidation?

A. Yes. They were all to continue as long as they were successful financially.

Mr. Tonjes: Were any of these agreements in writing?

The Witness: I think they are in part of this agreement. [73] I am not sure.

Q. By Mr. Latham: But whether oral or in writing,— A. They were all making money.

(Testimony of Douglas W. Wilson)

Q. —the agreement was that they were all to be continued so long as they made money? A. Oh, yes.

Q. Turning to Petitioner's Exhibit A, the petition of the Consolidated Printing and Publishing Company addressed to the Corporation Commissioner, I show you Exhibit E attached to said petition, which purports to be a copy of a contract dated June 20, 1929, entered into between the Daily Journal Company and the Legal Publishing Company. You have seen that contract?

A. Yes.

Q. That contract was duly entered into between the parties named? A. Yes.

Q. You executed the contract, as president of the Daily Journal Company? A. I did.

Q. I notice that on page 5 the following paragraph appears:

"It is hereby further covenanted and agreed that the executive officers of said new corporation shall not charge or receive any salary for their services rendered to said corporation unless [74] otherwise ordered by the affirmative vote of all of the members of the Board of Directors of said new corporation."

That was a part of that contract?

A. That is true.

Q. What did you mean by referring to the "new corporation"? A. The Consolidated.

Q. Why was that provision inserted in this contract between the Daily Journal Company and the Legal Publishing Company?

Mr. Tonjes: That is objected to as not being the best evidence. The agreement speaks for itself, and it is incompetent of the minority stockholders.

(Testimony of Douglas W. Wilson)

Q. By Mr. Latham: Minority stockholders of what?

A. Of the Consolidated Printing and Publishing Company.

Q. Why?

A. They felt that the stockholders of the company could regulate and pay higher salaries to the controlling interests in the company.

Q. Have you ever requested Consolidated to pay you a salary, as president or otherwise?

Mr. Tonjes: That is objected to as being immaterial.

Mr. Witness: No, I have not. [75]

Q. By Mr. Latham: From the date of the organization of Consolidated to the present, have you ever received anything directly from that company, by way of salary or otherwise? A. I never have.

Q. Prior to the consolidation and at the time this contract of June 20, 1929 was entered into, was it understood that you were to be president and general manager of the new company by all of the constituent parties?

A. Yes.

Q. Were these other parties also familiar with this provision with respect to salaries, so far as Consolidated was concerned? A. That is right.

Q. That is, I mean by the other concerns joining in the merger? A. Oh, yes.

Q. At the time of the consolidation, what was the understanding of the parties as to the duties which you were to perform as president and general manager of the Consolidated Company?

Mr. Tonjes: That is objected to as being immaterial and not the best evidence.

(Testimony of Douglas W. Wilson)

The Witness: My duties were to consist of operating all of the different papers owned by the Consolidated, and the management of the new company. [76]

Q. By Mr. Latham: In other words, it was understood that you were to be president and general manager in all that term implies? A. That is true.

Q. Was the plan of consolidation, as embodied in this contract of June 20, 1929 and as set forth in this application to the Corporation Commissioner' Petitioner's Exhibit A, duly submitted by you to the directors and stockholders of the Daily Journal Company? A. It was.

Q. And was it duly approved by them? A. Yes.

Q. Was their attention specifically called to the provision in the contract of June 20, 1929, prohibiting you and other officers from accepting any salary from Consolidated without the unanimous approval of the Consolidated's board of directors?

Mr. Tonjes: That is objected to on the ground it is premised on a conclusion and interpretation of the contract.

Mr. Latham: I will withdraw the question.

Q. By Mr. Latham: Was their attention specifically called to the provision in the contract of June 20, 1929, appearing on page 5, and heretofore read in the record, and which reads:

"It is hereby further covenanted and agreed that the executive officers of said new corporation [77] shall not charge or receive any salary for their services rendered to said corporation unless otherwise ordered by the affirmative vote of all of the members of the Board of Directors of said new corporation."

A. Yes, it was.

(Testimony of Douglas W. Wilson)

Q. Was said provision discussed between you?

A. It was.

Q. And what was said with respect thereto, or what action was taken, if **any**?

A. By the general stockholders?

Q. Yes, and the directors.

Mr. Tonjes: The respondent objects on the ground that it is immaterial and incompetent.

The Witness: They stated that they felt that the Daily Journal Company should continue paying my salary, that the operation of the Daily Journal itself had only been moved from the company to a company under a different name, and the duties would be as great, if not greater, in taking over the responsibility of the other four papers, and that the Journal Company should continue paying my salary.

Q. By Mr. Latham: Did they give you any instructions with respect to your activities, as president of the Daily Journal Company? A. Yes.

Q. What were those instructions? [78]

A. To continue the operation of the Daily Journal and these other four papers.

Q. Was that to be in behalf of the Daily Journal Company? A. Yes.

Q. Immediately after the consolidation, the assets of the Daily Journal Company consisted of what? Just roughly. I don't mean in amount, but in general.

A. They had some cash, I think two pieces of real estate, and a small amount of stocks and bonds, and a few accounts receivable.

Q. And the various classes of stock of the Consolidated Company received upon the consolidation?

A. That is right.

(Testimony of Douglas W. Wilson)

Q. How much of your time, as president of the Daily Journal Company, did the management and control of these assets of the Daily Journal Company, other than the stock of Consolidated, require—

Mr. Tonjes: During what year, Mr. Latham?

Q. By Mr. Latham (Continuing) —from 1929 on, including the years 1936, 1937 and 1938?

Mr. Tonjes: The respondent objects to the question as it is framed, for the reason it covers years not before the Board and which have no bearing in this proceeding.

The Witness: You mean the assets that were left in the Daily Journal Company after the merger? [79]

Q. By Mr. Latham: Yes.

A. That belonged to the old company?

Q. That is right. A. Practically no time.

Q. During the years 1936, 1937 and 1938, then you devoted little or no time to the management of the assets of the Daily Journal Company, excluding its stock ownership in Consolidated?

A. That is right. That is all there was to the company.

Q. Now, from 1929 to the present, including the years 1936, 1937 and 1938, how much of your time did you devote to the affairs of the Daily Journal Company?

A. All of my time; more than I had previously, before the consolidation.

Mr. Tonjes: This is off the record.

(Discussion off the record.)

Q. By Mr. Latham: During these years, what was the principal asset and principal source of income of the Daily Journal Company?

A. The stock in the Consolidated Printing and Publishing Company.

(Testimony of Douglas W. Wilson)

Q. Which the company acquired upon the consolidation in 1929?

A. That is true. That is the only income they have had.

Q. In acting as president and general manager of [80] Consolidated, for whom were you acting?

A. The stockholders of the Daily Journal Company.

Q. And for the Daily Journal Company?

A. And for the Daily Journal Company.

Mr. Tonjes: I move that that be stricken on the ground it calls for a conclusion of the witness, and that it also calls for a conclusion of law.

Q. By Mr. Latham: Regardless of whether it calls for a conclusion of law or not, is your answer the same?

A. Yes.

Q. In acting as president and general manager of Consolidated, were you acting according to directions and instructions of the Daily Journal Company?

A. I was.

Q. After the consolidation, were meetings of the stockholders and directors of the Daily Journal Company held at regular intervals? A. Yes.

Q. What was the nature of the business generally transacted in these meetings?

A. Well, the discussion of the operation of the Consolidated, its policy, and any matters that might come up at the meetings, the Consolidated Printing and Publishing Company's meetings.

Q. Did you report regularly to the directors and stockholders of the Daily Journal as to the affairs and [81] progress of Consolidated? A. I did.

(Testimony of Douglas W. Wilson)

Q. Prior to the consolidation, where were the offices and plant of the Daily Journal located?

A. 121 North Broadway.

Q. Los Angeles? A. Yes.

Q. Your office, as president, was in the same location?

A. Yes, sir.

Q. After the consolidation, where were the offices and plant of the Consolidated located?

A. At the same location.

Q. And where was your office located?

A. At the same location.

Q. The same room? A. The same room.

Q. In the offices used by Consolidated and the Daily Journal Company at the location named, does the name "Consolidated Printing and Publishing Company" appear any place? A. No.

Q. Is that company listed in the Los Angeles telephone directory? A. No.

Q. I show you what appears to be a copy of a publication called, "The Los Angeles Daily Journal", dated August 26, [82] 1941. Was that paper the equivalent of the Daily Journal, as published by that company prior to the consolidation? A. You mean as to size?

Q. Well, as to size, name and general form?

A. Yes, in general form, the same thing.

Q. I notice that on page 4 the following appears, "Los Angeles Daily Journal. Published Daily Except Sunday by Daily Journal Company, Inc."

Why doesn't the name, Consolidated Printing and Publishing Company, appear in the space just mentioned?

A. It wouldn't mean anything to the publication. The

(Testimony of Douglas W. Wilson)

Journal is 50 some odd years old, and it is the name, Daily Journal, which is the good will of the paper.

Q. In other words, you do not want to lose any good will attaching to the old paper? A. No.

Mr. Latham: I offer as Petitioner's Exhibit B, the paper just referred to.

Mr. Tonjes: No objection.

(Thereupon the document referred to was marked "Petitioner's Exhibit B, 9-5-41," for identification, and the same is attached hereto and made a part hereof.)

Q. By Mr. Latham: I show you what purports to be a copy of "The Los Angeles News", dated September 4, 1941, and ask you if this is the equivalent of the paper published by [83] the Legal Publishing Company, prior to the consolidation in the year 1929.

(Handing document to witness.)

A. It is.

Q. This paper is now owned by the Consolidated?

A. By Consolidated.

Q. I notice on page 8 that the following appears, "The Los Angeles News. G. V. Allen, Publisher."

I take it, that the name of Consolidated is not employed for the same reason that it does not appear in "The Daily Journal"? A. That is correct.

Mr. Latham: I offer this copy of the paper as Petitioner's Exhibit C.

Mr. Tonjes: That is objected to as being incompetent and immaterial.

(Thereupon the document referred to was marked "Petitioner's Exhibit C, 9-5-41", for identification, and the same is attached hereto and made a part hereof.)

(Testimony of Douglas W. Wilson)

Q. By Mr. Latham: I show you what purports to be a copy of the "Independent Review," dated July 10, 1941, and ask you if that is published by the Consolidated Printing and Publishing Company?

(Handing document to witness.)

A. It is. [84]

Q. And this represents a consolidation of certain papers acquired, or, a merger of certain papers acquired during the consolidation in 1929?

A. That is right.

Mr. Latham: I will offer this as Petitioner's Exhibit D.

Mr. Tonjes: Objected to as being immaterial.

(Thereupon the document referred to was marked "Petitioner's Exhibit D, 9-5-41", for identification, and the same is attached hereto and made a part hereof.)

Q. By Mr. Latham: Mr. Wilson, were these papers, in the same form and in general in the same length, published by Consolidated during the years 1936, 1937 and 1938?

A. Yes, practically the same.

Q. Is the labor and effort required to published them now approximately the same as it was in 1936, 1937 and 1938?

A. Yes.

Q. Has the Consolidated now any letterhead or bill head?

A. None whatever.

Q. Has it ever had?

A. It never has had.

Q. We are to understand then that since the consolidation, including the years 1936, 1937 and 1938, these various papers have been operated as entirely separate departments?

A. That is right.

Mr. Latham: This is off the record. [85]

(Discussion off the record.)

(A short recess was taken.)

(Testimony of Douglas W. Wilson)

Q. By Mr. Latham: At directors' meetings of Consolidated, did any other director or directors of the Daily Journal sit in with you?

Mr. Tonjes: That is objected to as being immaterial.

The Witness: Yes.

Q. By Mr. Latham: So that through you and others the Daily Journal is constantly advised of the affairs and business of Consolidated?

A. Yes. There are always two or more directors of the Journal Company at Consolidated meetings.

Q. Compare your duties, as president of the Daily Journal Company, prior to the consolidation, with your duties during the years 1936, 1937 and 1938.

A. Well, I would say they had been multiplied considerably, due to the fact that we have an additional daily and three weeklies to take care of, in addition to the Daily Journal, which is a daily.

Q. Did any officer, other than yourself, draw any salary from the Daily Journal Company during the years, 1936, 1937 and 1938?

A. From the Daily Journal Company?

Q. Yes.

A. No. It paid no salary to anyone outside of myself.

Q. Have you an opinion as to what would have been [86] reasonable compensation during the years, 1936, 1937 and 1938, for a person of your experience and qualifications, who devoted all of his time, as president, to the affairs of the Consolidated Printing and Publishing Company, and had no connection with any other corporation? Just answer "yes" or "no." I am asking you whether you have an opinion.

Mr. Tonjes: That is objected to as being immaterial.

The Witness: I have.

(Testimony of Douglas W. Wilson)

Q. By Mr. Latham: In your opinion, what would constitute reasonable compensation in the years 1936, 1937 and 1938 for a person with your qualifications, who acted and was president of that corporation, Consolidated, for the years just mentioned?

Mr. Tonjes: Objected to as being immaterial.

The Witness: I would think a reasonable compensation for the management of an organization of that type would be from \$18,000 to \$20,000 a year.

Q. My Mr. Latham: That applies to the years, 1936, 1937 and 1938?

A. Yes, all during the life of Consolidated.

Q. Have you an opinion as to what would constitute reasonable compensation, for a man of your experience and qualifications, to perform the duties of president of a corporation, such as the Daily Journal Company, with the duties imposed upon and performed by you during the years 1936, 1937 and 1938? Have you any such opinion?

[87]

A. Just the Daily Journal alone?

Q. With all the duties that devolved upon the president of the Daily Journal. Have you an opinion?

A. Yes, I have.

Q. In your opinion, how much would be reasonable?

Mr. Tonjes: I object to the question as being incompetent and immaterial.

Mr. Latham: In your opinion, what would be such reasonable compensation?

A. \$12,000 to \$15,000 a year would be consistent.

Q. By Mr. Latham: Now, in considering what would constitute such reasonable compensation during these years, you have given consideration to the fact that one

(Testimony of Douglas W. Wilson)

or the principal duty of such officer was the management of Consolidated Printing and Publishing Company?

A. Yes.

Q. In your opinion, was the salary paid to and received by you, as president of the Daily Journal Company, during the years, 1936, 1937 and 1938, for services rendered by you to that company, reasonable or unreasonable?

A. Unreasonable.

Q. Your salary was unreasonable? A. Yes.

Q. In what respect? A. It was too low.

Q. What, in your judgment, should it have been? [88]

A. It should have been at least \$15,000 a year. You mean just the Journal itself?

Q. Yes. Then, in your opinion, the \$12,000 which you received during those years was, under no circumstances, excessive? A. Oh, no.

Q. Since the consolidation in 1929, what has been, in general, the dividend policy of the Daily Journal Company?

A. We pay out all dividends received from the Consolidated.

Q. After, of course, deducting expenses of the operation? A. Yes.

Q. And that policy has been consistently followed?

A. Yes, ever since the consolidation.

Mr. Latham: Now, may I have a moment?

Mr. Tonjes: Yes.

Mr. Latham: And may I step outside, for a moment, with my compatriots?

Mr. Tonjes: Certainly.

(A short recess, during which counsel for petitioner left the hearing room.)

Mr. Latham: You may cross examine.

(Testimony of Douglas W. Wilson)

Cross Examination

By Mr. Tonjes:

Q. Mr. Wilson, your attention was directed to the fact [89] that the Daily Journal, as it is published today, bears a notation that it is published by the Daily Journal Company? A. Yes.

Q. It is, as a matter of fact, published by the Consolidated Company, is it not? A. Yes, I guess so.

Q. The Daily Journal itself does not have any plant and it does not gather news and publish it and print it?

A. That is correct.

Q. Now, you stated also that, in your opinion, the value of the services performed by you for the Consolidated was approximately \$18,000 a year, did you not?

A. Yes.

Q. Did you receive any compensation from Consolidated? A. None whatever.

Q. Why not?

A. I have never asked for any, and the provision of that agreement there would not permit it; and, further, I was compensated by the Daily Journal Company.

Q. In other words, the Daily Journal Company paid you for services which you performed for Consolidated?

A. That is correct, and for the Daily Journal Company's stockholders.

Q. Just what services did you perform for the Daily Journal?

A. The management of the operation of the Daily Journal [90] and—

Q. Now, who—go ahead and finish your answer.

A. (Continuing) —and the management of the other four papers taken in the merger.

(Testimony of Douglas W. Wilson)

Q. Who published the Daily Journal?

A. After 1929?

Q. My questions, Mr. Wilson, will be directed entirely to the years, 1936, 1937 and 1938, unless I otherwise so specify.

A. Yes.

Q. Who published the Daily Journal during the years, 1936, 1937 and 1938?

A. The Consolidated Printing and Publishing Company.

Q. And it received the compensation for the fees paid for the paper?

A. They received all the income.

Q. They received all the income?

A. That is correct.

Q. Then whatever services you rendered in connection with publishing the Daily Journal flowed to the benefit of the Consolidated Company, did it not?

Mr. Latham: May I have that question?

(The question was read.)

The Witness: It did, and indirectly back to the Journal.

Q. By Mr. Tonjes: How would the Journal benefit by it? [91]

A. By receiving its pro rata of the dividends earned by the Consolidated.

Q. Then the primary purpose of your performing the services for the Consolidated Company was to increase the dividends which the Daily Journal Company might receive?

A. That is correct.

Q. You also stated that you performed certain services for the Consolidated Company, on behalf of the Daily Journal Company. Is that correct?

A. Yes.

(Testimony of Douglas W. Wilson)

Q. Now, did the Daily Journal Company receive any compensation for the services which you rendered to the Consolidated Company directly?

A. I don't believe I get your question.

Q. All right. Did the Daily Journal Company receive any compensation for the services which you rendered to the Consolidated Company?

We both appreciate, of course, that there would be an increase in dividends if the company, the Consolidated Company, made more profits by reason of your services, but did the Consolidated Company pay directly to the Daily Journal Company any money for your services?

A. Only through dividends.

Q. Only through dividends?

A. Only through dividends.

Q. That was the only benefit received by the company? [92] A. That is correct.

Q. Now, you also stated that at the meeting of the directors of the Consolidated Company, certain directors of the Daily Journal Company sat in those meetings?

A. Yes, sir.

Q. Did they sit in as directors of the Consolidated Company or merely because they were directors of the Daily Journal Company? A. Because they were directors of the Daily Journal Company.

Q. Were they also directors of the Consolidated Company? A. Two of them were.

Q. How many sat in the meetings of the Consolidated Company, who were not directors of the Consolidated Company? A. One.

Q. One? A. One is correct.

Q. Who was that? A. A. A. McDowell.

(Testimony of Douglas W. Wilson)

Q. Did he attend all meetings? A. Yes.

Q. He was quite regular in his attendance?

A. Oh, yes.

Q. And he was in there more as an observer than anything else?

A. Well, he and his wife owned stock in the Daily [93] Journal Company.

Q. He, of course, had no vote in the affairs of the Consolidated Company, did he?

A. No. I will take that back. He is a director of Consolidated. I am wrong about that.

Mr. Wright: He was not at that time?

Q. By Mr. Tonjes: Was he during the years 1936, 1937 and 1938? A. No, I don't think he was.

Q. He was not?

A. No. I am not positive on that.

Q. Then he would have no official voice in the management of the company at all, would he?

A. No. What I mean to imply there is he is not a director of the Daily Journal Company, but he is a director of the Consolidated Company and he represents his wife's holdings in the Daily Journal Company.

Mr. Wright: Off the record for a moment.

Mr. Tonjes: Yes.

(Discussion off the record.)

Q. By Mr. Tonjes: Maybe I can ask the question in this way:

Did anyone sit in the meetings of the board of directors of the Consolidated Company, who was not a member of the board of directors of the Consolidated Company, during the years 1936, 1937 and 1938? [94]

A. I don't believe they did.

(Testimony of Douglas W. Wilson)

Q. They were all directors of the Consolidated?

A. Yes.

Q. Now, the Consolidated published four papers, did it?

A. Yes.

Q. Approximately how much of the stock of Consolidated did the Daily Journal Company own?

A. Two-thirds.

Q. Two-thirds? A. Two-thirds.

Q. Did all four papers of Consolidated receive some benefit from the services which you rendered to the Consolidated?

A. Yes, they did.

Q. Now, did you devote all of your time to the affairs of the papers published by the Consolidated Company?

A. Yes, all of my time.

Q. Then you didn't devote any time directly to the affairs of the Daily Journal Company, outside of perhaps directors' meetings, and so forth?

A. And in representing their stock in the Consolidated.

Q. What do you mean by "representing their stock in the Consolidated"?

A. Well, through the management of Consolidated earning the stockholders of the Journal more revenue.

Q. Will you distinguish, if you can, the times you [95] appeared in meetings or performed other functions as a stockholder of the Daily Journal Company, purely as a stockholder, and the services which you rendered to the Consolidated Company to promote the interests of the Consolidated Company, as such?

I guess that is a little complicated. If you understand the question, answer it. Otherwise, skip it.

A. You mean if we ever held meetings of the board

(Testimony of Douglas W. Wilson)
of directors to discuss what we could do with Consolidated to increase the Journal's profits?

Q. Yes.

A. Yes, we have meetings of that kind right along.

Q. Now, how much time did you devote to that sort of thing?

A. Oh, practically—well, of course, we consider it more or less one and the same thing, because our whole interests are represented in the Consolidated; all the stock interests are in the Consolidated.

Q. It was, then, primarily to increase your dividends?

A. That is right.

Q. Do you own stock in any other companies?

A. No.

Q. Do you perform any services for any other companies without any compensation?

A. No, I have no connection with any other companies.

Q. Do you own any stock in any? [96]

A. Pardon me. Not outside of the Wilson Holding Company, which is a holding company of the Wilson real estate, which my father left, and which is inactive. That is, they just own the real estate.

Q. Then the entire organization which bears the name, Daily Journal Company, is really the business of Consolidated, is it not? That is to say, you say you have an office down here which has "Daily Journal Company" on it?

A. Yes.

Q. How large an office is it?

A. The whole plant?

Q. Well, the office, we will say, first.

A. Well, the office is about 40 by 73; that is for the clerical department, and then my office is just a small

(Testimony of Douglas W. Wilson)

room about half the size of this. There is no identification anywhere of Consolidated.

Q. How many employees do you have there in the office? A. In the whole—of Consolidated?

Q. Yes. A. Approximately 80 to 85.

Q. Now, are any of those employees employed directly by the Daily Journal Company?

A. No. I am the only employee of the Daily Journal Company.

Mr. Wright: I just want to interpose for correction: Hasn't the Daily Journal Company a part time bookkeeper? [97]

The Witness: Part time bookkeeper?

Mr. Wright: Yes, or a bookkeeper.

The Witness: I might be wrong about that.

Mr. Wright: Miss Bradford, I think it is.

The Witness: Is she paid by the old Daily Journal too? I think that has ceased, hasn't it?

Q. By Mr. Tonjes: Well, I want to direct your attention to the fact, Mr. Wilson, that the 1936 income tax return shows a deduction of compensation in the Officers' Schedule C of \$12,000.

Mr. Latham: What return is that?

Mr. Tonjes: The income tax return for 1936.

Mr. Latham: For the Daily Journal Company?

Mr. Tonjes: For the Daily Journal Company, yes.

Q. By Mr. Tonjes (Continuing) And that it shows salaries paid in the amount of \$189.01?

A. For a year?

Q. For a year. Can you tell me to whom those salaries were paid, and for what services?

A. I can't imagine, unless it is to an assistant bookkeeper for the Consolidated, who is making the entries to

(Testimony of Douglas W. Wilson)

some of these old accounts receivable for the old Daily Journal Company.

Q. The \$12,000 indicated on that return was paid to you?

A. That is correct. [98]

Q. To the best of your recollection, there were no substantial salaries paid, in addition to those shown on the 1936 return, for the years 1937 and 1938?

A. No, none whatever.

Q. Mr. Wilson, I think that you made reference in your direct testimony to the effect that the Consolidated Company instructed you to do certain things. Do you recall the nature of that testimony?

A. The Daily Journal Company instructed me. You mean at the time of the forming of the new Consolidated?

Q. No. During the years 1936, 1937 and 1938, did the Daily Journal, either its board of directors or stockholders, direct you to perform any services for Consolidated?

A. Oh, yes, from the time that Consolidated was incorporated right down to date they instruct me as to my operations.

Q. What do they instruct you to do?

A. Well, it is—

Q. Let's strike that and start over. Who instructs you?

A. The directors and stockholders of the Daily Journal Company.

Q. Do they give you any formal instructions?

A. Yes. We all discuss and agree upon a policy to pursue on certain matters that are coming up.

(Testimony of Douglas W. Wilson)

Q. Now, will you please state, as accurately as you can, what instructions you operated under during the years, [99] 1936, 1937 and 1938?

A. Yes. A big part of our volume is the City and County and State and Federal contracts, and those are yearly contracts. Those are always competitive bids, and sometimes we have advance information as to what those bids are going to be, and we govern our bid accordingly, as to whether we want to take it at a lower price, a higher price, or let it go. I might say that it demands a lot of work and time and attention and political contacts to wind these different contracts up, and those are all discussed in meetings of the Daily Journal Company, and our policy is all determined at that time, and then they instruct me as to what to do, or we come to a conclusion as to what to do.

Q. Those remarks relate to the publications published by the Consolidated Company?

A. Yes. We control the board of directors on the Consolidated. Therefore, our decision is final on any action taken.

Q. You were one of the directors on the board of directors of the Daily Journal Company?

A. Yes.

Mr. Latham: Still are?

The Witness: Still am.

Q. By Mr. Tonjes: And that action was taken in order that the dividend income of the Journal Company might be increased? [100]

A. That is right; continued or increased, if possible. In other words, we just consider the whole functioning is just the same today there as it has been since the Journal started. We don't even consider the Consolidated. The others are such a minority interest.

(Testimony of Douglas W. Wilson)

Q. Which is the largest of the several papers published by Consolidated? A. The Daily Journal.

Q. The Daily Journal? A. Is the largest, yes.

Q. Do they all make money?

A. Yes, every one of them has a profit.

Q. The actual work and services performed by you in connection with the holding of the assets of the Daily Journal Company and the management thereof did not consume a great deal of your time, did it?

A. The assets of the old Journal?

Q. Of the Daily Journal Company, which it owned, during the years 1936, 1937 and 1938?

A. Other than the stock in the Consolidated?

Q. I mean all of the assets.

A. Oh, yes. It consumed all my time, including the stock of the Consolidated. That is our sole interest and practically the only asset we have is our stock in the Consolidated.

Q. All you have to do is to hold the stock, don't you? [101]

A. If you didn't manage the Consolidated properly, the Journal wouldn't have anything.

Q. But the fact is you weren't required to do that, were you?

A. Oh, definitely, by the stockholders of the Daily Journal Company. That is our sole interest. We have no other interest.

Q. Suppose you just sat by and collected the dividends, what would happen?

A. I don't think there would be any dividends, if we just sat by.

(Testimony of Douglas W. Wilson)

Q. But you could do it, if you just so chose?

A. I don't see how we could collect the dividends. I don't believe there would be any.

Q. The actual legal imposition of duties upon you was merely to hold the assets; isn't that correct?

A. No.

Mr. Latham: Just a minute. Will you read the question? I believe he has answered that a number of times, Mr. Tonjes.

Will you read the question?

(The question and answer were read.)

Mr. Latham: Oh, I have no objection.

Q. By Mr. Tonjes: Was the answer "no"?

A. Yes.

Q. What else did you have to do?

A. To continue making a profit with those assets by [102] managing the Consolidated for the Daily Journal stockholders. That is the only source of income they have, and if not properly managed, would not be worth anything, and being a specialized business, I don't believe you could save those assets if they were mismanaged.

Q. Now, the \$12,000 salary which you received during the years, 1936, 1937 and 1938, was authorized by the board of directors in 1917? A. Yes.

Q. In 1917 was the Daily Journal Company operating a newspaper? A. Yes.

Q. And the corporation was then engaged in active business? A. Yes, the same as now.

Mr. Latham: Did you get that last?

The Reporter: Yes.

(Testimony of Douglas W. Wilson)

Q. By Mr. Tonjes: It published a newspaper?

A. The same as now. It continued the publication of that same newspaper.

Q. A moment ago, Mr. Wilson, you stated that the Consolidated published the Daily Journal now?

A. Yes.

Q. (Continuing)—all during the years, 1936, 1937 and 1938, and now you say that the Daily Journal Company is doing the same or is an active company now, or was in the years [103] 1936, 1937 and 1938 as it was in 1917.

A. We consider it as such, only our stock is just held through the Consolidated instead of directly by the Daily Journal Company.

Q. But the Daily Journal Company, as such, prints and publishes no newspaper, does it?

A. It doesn't own the newspaper in its own corporate name, but it owns it through the same Daily Journal stock through the Consolidated.

Q. Under your understanding of the term, you wouldn't call the Daily Journal Company an operating company, would you? A. I do, yes.

Q. What does it operate?

A. It operates the Consolidated Printing and Publishing Company, which is its sole interest.

Q. What does the Consolidated Printing and Publishing Company operate then?

A. Well, I would say the Consolidated Printing and Publishing Company is operated through the Daily Journal Company.

Q. The Daily Journal Company does not own any printing presses, does it?

(Testimony of Douglas W. Wilson)

A. No. They are just held by the Consolidated. It would have been better maybe if they had just made a lease of the paper to the Consolidated; I don't know. [104]

Q. I think that might be true.

A. It might have been at that. I don't know.

Q. Then, as a general proposition, you would say that the services for which you receive the \$12,000 a year from the Daily Journal Company are in connection with the operation of the newspapers published by the Consolidated Company? A. That is correct.

Q. And it is deemed to be good business, because it will increase the dividend income of the Daily Journal Company? A. That is correct.

Mr. Tonjes: I think that is all.

Mr. Latham: I have just one or two more questions.

Redirect Examination

By Mr. Latham:

Q. Mr. Wilson, I assume that the purpose or reason for the consolidation in 1929 was to increase the income of the Daily Journal Company?

A. That is correct, and to eliminate a lot of unpleasant competition in connection with it. There was price cutting.

Q. And were both those purposes accomplished?

A. Yes, definitely. That income was increased greatly.

Q. Was it understood at the time of the consolidation, and an inducement to the consolidation on the part of all [105] parties, that you would act as president of the Consolidated Company?

A. Yes, that was understood. It was understood that the Journal management would continue as the management of the Consolidated.

(Testimony of Douglas W. Wilson)

Q. Did the other constituent companies want the Journal management to continue? A. Yes, they did.

Q. Would you have deemed it a breach of faith had you failed to continue as such, as head of the Consolidated Company during the years in question?

A. Yes, I would, to both; to all stockholders of the Daily Journal Company and the Consolidated.

Q. In other words, I assume that the consolidation could not have been effected without the understanding that you would continue as president of the Consolidated Company throughout your remaining business career?

A. That is correct.

Q. And that understanding prevailed throughout the years, 1936, 1937 and 1938?

A. Yes.

Mr. Latham: May I step outside with my associates again?

Mr. Tonjes: Certainly.

(A short recess, during which counsel for the petitioner left the hearing room.)

Mr. Latham: We have nothing further. [106]

Mr. Tonjes: That is all.

Douglas W. Wilson.

Subscribed and sworn to before me this 10th day of September, 1941.

Marie G. Zellner

Notary Public in and for the County
of Los Angeles, State of California.

My Commission Expires Dec. 27, 1944.

[107]

105,054 Petn's Exhibit No. A Date 4/5/41 Marie
G. Zellner, Notary Public.

PETITION OF
“CONSOLIDATED PRINTING AND PUBLISHING
COMPANY”

TO ISSUE AND SELL STOCK.

TO THE HONORABLE, THE CORPORATION
COMMISSIONER OF THE STATE OF CALI-
FORNIA:

Comes now “Consolidated Printing and Publishing Company, a corporation, duly incorporated under the laws of the State of California, and respectfully shows:

That your petitioner filed its Articles of Incorporation in the office of the Secretary of State of the State of California, on the 29th day of July, 1929, and a duly certified copy thereof in the office of the County Clerk of the County of Los Angeles, State of California on the 31st day of July, 1929.

That a true copy of said Articles of Incorporation is hereto attached, marked “Exhibit A”, is hereby referred to and made a part hereof.

That on the 29th day of July, 1929, said Secretary of State issued to your petitioner a certificate of the incorporation of this petitioner in manner and form provided by law. That this petitioner at the time of filing of the said Articles in the office of the said Secretary of State paid all fees of said Secretary of State by said Secretary of State demanded.

That on the 2nd day of August, 1929, the incorporators of this corporation filed a written consent to the holding of the “First Meeting of the Organizers and Subscribers of Stock” of said corporation, and said meeting was thereupon duly held. That the proceedings were had and taken as shown by the minutes [108] of said meeting.

That a true copy of said Written Consent and Minutes of said meeting is hereto attached, is marked "Exhibit B" and is made a part hereof. That thereafter, to-wit: at 2:15 o'clock, P.M. of said day, the first meeting of directors of this corporation was held upon the written consent of the several directors succeeding the directors named in the By-laws, the directors named in the By-laws having resigned and their successors having been elected and the proceedings were had as shown in the minutes of said meeting, a copy of which said Consent and Minutes is hereto attached and marked "Exhibit C".

That a copy of the By-laws so adopted by said stockholders and directors and signed by said incorporators and stockholders is hereto attached, is marked "Exhibit D" and made a part hereof. That at said meeting so held at 2:15 o'clock P.M. of said 2nd day of August, 1929 of which a copy is hereto attached, marked "Exhibit C", the following resolution was adopted:

"RESOLVED, that a petition or application be made on behalf of this Corporation to the Corporation Commissioner of the State of California for leave to issue to The Daily Journal Company, a corporation, duly incorporated under the laws of the State of California, in consideration of the transfer and conveyance by the said The Daily Journal Company to the Consolidated Printing and Publishing Company of certain tangible assets and properties of the said The Daily Journal Company, particularly described in an inventory filed with the Secretary of said Consolidated Printing and Publishing Company, shares of the "Class A" preferred stock of said Consolidated Printing and Publishing Company; also to issue to Legal Publishing Company in

consideration of the transfer and conveyance to said Consolidated Printing and Publishing Company of certain tangible assets described in an inventory filed with the Secretary of said Consolidated Printing and Publishing Company shares of the "Class A" preferred stock [109] of said Consolidated Printing and Publishing Company; also to issue to said The Daily Journal Company in consideration of the transfer, assignment and conveyance by said The Daily Journal Company to said Consolidated Printing and Publishing Company of the good will, business, franchises, subscription lists, advertising lists and other properties mentioned and referred to in that certain contract dated the 20th day of June, 1929, made and entered into by and between The Daily Journal Company, a corporation, as party of the first part, and Legal Publishing Company, a corporation, as party of the second part, 3,750 shares of the "Class B" preferred stock of said Consolidated Printing and Publishing Company; also to issue to Legal Publishing Company in consideration of the transfer, assignment and conveyance by said Legal Publishing Company of the good will, business franchises, subscription lists and other assets to be transferred to said Consolidated Printing and Publishing Company as recited in that certain contract so dated the 20th day of June, 1929, made and entered into between The Daily Journal Company, a corporation, as party of the first part, and Legal Publishing Company, a corporation, as party of the second part, 1250 shares of the said "Class B" preferred stock of said Consolidated Printing and Publishing Company; also in consideration of the said transfer of said business, good will, and assets hereinabove mentioned by said

The Daily Journal Company, to issue to said The Daily Journal Company 2625 shares of the "Common" stock of said Consolidated Printing and Publishing Company; also to issue to said Legal Publishing Company in consideration of the transfer, assignment and conveyance of said business, good will and assets hereinabove recited to be conveyed to said Consolidated Printing and Publishing Company 875 shares of the "Common" stock of said Consolidated Printing and Publishing Company. That of the said stock so to be issued to said The Daily Journal Company, said corporation, as aforesaid, to be transferred to Dan W. Green, Marie McManus, Katheryn G. Lawson and Elmer G. Riggins in consideration of the transfer and conveyance by them to said Consolidated Printing and Publishing Company of all of the interests held by said persons in a certain newspaper and its assets, printed and published at Los Angeles, California, known and designated as "California Independent", 210.9375 shares of said "Class B" preferred stock and 122.325 shares of said "Common" stock, and out of said stock to be issued to said Legal Publishing Company as aforesaid, there is to be transferred and issued to said persons, to-wit: Dan W. Green, Marie McManus, Katheryn G. Lawson and Elmer G. Riggins 70.3125 shares of [110] "Class B" preferred stock and 40.775 shares of "Common" stock. That likewise out of the said stock so to be issued to said The Daily Journal Company, there is to be issued to Dan W. Green in consideration of the sale, assignment and transfer by the said Dan W. Green to said Consolidated Printing and Publishing Company of the one-half ($1/2$) interest of the said Dan W. Green in and to a certain

newspaper and its plant known and designated as "Los Angeles Review" printed and published at the City of Los Angeles, County of Los Angeles, State of California, 281.25 shares of "Class B" preferred stock and 163.275 shares of the "Common" stock and by said Legal Publishing Company 93.75 shares of said "Class B" preferred stock and 54.425 shares of said "Common" stock.

BE IT FURTHER RESOLVED, that said Corporation Commissioner be requested to permit the sale of all of the remainder of the "Class A" preferred stock at its par value, without the payment of any brokerage, the moneys derived from such sale to be placed in the treasury of this Company to be used in the same manner as other moneys used in the business of and for the development of this Company, and

BE IT FURTHER RESOLVED, that the President and Secretary and Directors of this Company be authorized to take such steps and to execute such documents in the name of this Company as may be necessary or convenient to obtain from the Corporation Commissioner the permit hereinabove referred to."

That the petitioner has not heretofore issued any stock to anyone.

That this petitioner has not issued any securities or evidence of debt and has not incurred any debt. That this petitioner is organized for the purpose of consolidating certain printing and publishing establishments known and designated and heretofore and now doing business at the City of Los Angeles, County of Los Angeles, State of California, under the following names and designations,

to-wit: First: "The Los Angeles Daily Journal" operated and conducted by The Daily Journal [111] Company, a corporation; "The Los Angeles News", printed and published by Legal Publishing Company, a corporation, at the City of Los Angeles, County of Los Angeles, State of California; "California Independent", printed and published by a co-partnership composed of Dan W. Green owning a one-fourth interest, Marie McManus owning a one-sixth interest, Katheryn G. Lawson owning a one-sixth interest, Elmer G. Riggins owning a one-sixth interest and Legal Publishing Company, a corporation, owning a one-fourth interest; also a one-half interest in a certain newspaper and its plant known and designated as "Los Angeles Review," printed and published at the City of Los Angeles, County of Los Angeles, State of California, by Dan W. Green and George Reuter, the interest of said Dan Green in said newspaper being that to be acquired by and consolidated with said other newspapers hereinabove mentioned in the one ownership, to-wit: title to be vested in said Consolidated Printing and Publishing Company.

That on the 20th day of June, 1929, said The Daily Journal Company, a corporation, as party of the first part, made and entered into a contract with said Legal Publishing Company as party of the second part, for the consolidation of the business of said The Daily Journal Company and said The Legal Publishing Company in the printing and publication by said The Daily Journal Company of the "Los Angeles Daily Journal" and the printing and publication by said The Legal Publishing Company of said "The Los Angeles News", and in that behalf for the organization of a new corporation to be known and designated as "Consolidated Printing and

Publishing Company." That the said contract was in writing and executed pursuant [112] to resolutions adopted by the Boards of Directors of each of the said corporations by the said corporations; that a copy of the form of said contract so entered into is hereto attached, is marked Exhibit "E", is hereby made a part hereof and referred to. That thereafter negotiations were entered into between said Daily Journal Company and said Legal Publishing Company with Dan W. Green, Marie McManus, Katheryn G. Lawson and Elmer G. Riggins for the consolidation of the outstanding three-fourth interest held by said persons in and to that certain newspaper printed and published at the City of Los Angeles, designated as "California Independent", the other outstanding one-fourth interest being then held by said Legal Publishing Company and being included within the purview of the said contract, a copy of which is hereto attached, marked "Exhibit B." That pursuant to the said negotiations so had on the 28th day of June, 1929, said The Daily Journal Company, a corporation, and Legal Publishing Company, a corporation, as parties of the first part made and entered into a contract in writing with Dan W. Green owning a one-fourth interest, Elmer G. Riggins owning a one-sixth interest, Marie McManus owning a one-sixth interest and Katheryn G. Lawson owning a one-sixth interest for the acquisition by said Consolidated Printing and Publishing Company under the terms in said contract stated, for the said three-fourth interest in the ownership of said California Independent, a copy of the form of which said contract so entered into is hereto attached, is marked "Exhibit F", is hereby referred to and made a part hereof.

That thereafter negotiations were entered into with one Dan W. Green for the acquisition by said The Daily Jour-

nal Company and said Legal Publishing Company for said Consolidated Print- [113] ing and Publishing Company of the interest of Dan W. Green in and to the business and printing establishment of that certain periodical or newspaper printed and published at the City of Los Angeles, County of Los Angeles, State of California, to-wit: a one-half interest therein, the other half interest therein being owned by one George P. Reuter. That the said negotiations culminated in a written contract dated the 29th day of June, 1929, made and entered into between The Daily Journal Company, a corporation and Legal Publishing Company, a corporation, as parties of the first part, and Dan W. Green as party of the second part, a copy of which said contract is hereto attached, is marked "Exhibit G", is hereby referred to and made a part hereof.

That on the 3rd day of July, 1929 for the considerations therein mentioned, the said George P. Reuter, the associate of said Dan W. Green in said Los Angeles Review, did make and enter into a contract in writing with The Daily Journal Company, a corporation, Legal Publishing Company, a corporation, California Independent, a co-partnership, and Dan W. Green, the form of which said contract is hereto attached, is marked "Exhibit H" and is hereby referred to.

That as will appear from the said several contracts, copies of the form of which are hereto attached, to-wit: Exhibits "E", "F" and "G", certain of the stock of said corporation, to-wit: of the "Class A" preferred stock is to be, with the consent of the Corporation Commissioner, issued to said The Daily Journal Company at par in payment of physical tangible assets to be conveyed by the component companies and individuals to said Consolidated

Printing and Publishing Company, all as [114] appears from the said several contracts hereto attached and marked Exhibits "E," "F", and "G", and the amount of "Class B" and "Common" stock to be issued to the several component companies with the consent of the Corporation Commissioner were predicated upon the earning capacities and earnings of the several component companies and individuals as experienced during the last three or four years so that in the distribution of the earnings to be made in the future by the Consolidated Printing and Publishing Company, the component companies and individuals entering into said consolidation would receive rateably the same proportions of earnings as theretofore had and enjoyed by the said several component companies and individuals. The maximum of 20% on said "Class B" preferred stock was predicated upon the probability of the earnings in the near future, reaching that figure, and the "Common" stock was designed to provide for a surplus earnings if any, over and above the 7% on the "Class A" preferred and the 20% on the "Class B" preferred. The 7% on the "Class A" preferred was to meet simply the legal rate of interest that the Consolidated Printing and Publishing Company would have to pay to a lender of money if he purchased the tangible assets for cash.

It will be observed from the said several contracts that provision was made for paying certain earnings to W. W. Roe as Trustee pending the action of the Corporation Commissioner upon this application to form a nucleus for working capital and is further intended with the consent of the Corporation Commissioner, from time to time to sell such of the "Class A" preferred stock to the component companies and individuals at par as needed, the said proceeds of such sale to be used as working capital

in the conduct of the business of said Con- [115] solidated Printing and Publishing Company. The latter applies to such of the "Class A" preferred stock as is not issued to the component companies and individuals for the tangible assets conveyed by them to this corporation.

It is further contemplated to retain at least for the time being, the corporate existence of said The Daily Journal Company and said Legal Publishing Company as well as the identity of said co-partnership composing said California Independent for business reasons and to facilitate the distribution of stock issued to said component companies and partnership for which reason the application is made for leave to issue stock to the said two corporations and to the said individuals owning the said three-fourths interest in the said California Independent and to the said Dan W. Green for his one-half interest in the said Los Angeles Review. Ultimately said Consolidated Printing and Publishing Company will become the sole operative company but its status at first will be more or less that of a holding company in perfecting such consolidation.

All of the said publications mentioned in the said contracts are publishers of legal notices and advertising and were heretofore more or less competitors which militated quite strongly against their earnings and it is designed to over-come such competition in a very limited field.

For the further guidance of the Commissioner, inventories of the tangible assets to be transferred and conveyed to the Consolidated Printing and Publishing Company by the component companies and individuals are hereto attached and appropriately designated. Likewise, trial balances showing the condition of the business for the periods covered in the [116] past of said component com-

panies and individuals are hereto attached and properly designated.

That your petitioner offers to furnish such other data within its possession or under its control or which can be furnished by its said component companies and individuals relative to the subject matter of this application as the Commissioner may desire. An inspection of the books and papers of the said component companies by a representative of the Commissioner is hereby also tendered.

WHEREFORE, your petitioner prays for a permit authorizing said Consolidated Printing and Publishing Company, first: to issue to said The Daily Journal Company 440.6228 shares of "Class A" preferred stock in consideration of the transfer and conveyance to said Consolidated Printing and Publishing Company of the tangible assets covered by that certain inventory of The Daily Journal Company hereto attached, at par; Secondly: 3,257.8125 shares of the "Class B" preferred stock, and 2,339.40 shares of the "Common" stock of said Consolidated Printing and Publishing Company in consideration of the conveyance and transfer to said Consolidated Printing and Publishing Company of the business, good will, subscription lists, contracts and contractual rights and other intangible property of said The Daily Journal Company; Third: to issue to Legal Publishing Company 83.3955 shares of said "Class A" preferred stock in consideration of the transfer and conveyance to said Consolidated Printing and Publishing Company of the tangible assets described in the inventory of said Legal Publishing Company hereto attached, at par; Fourth: to issue to the Legal Publishing Company 1085.9375 shares of the "Class [117] B" preferred stock and 779.80 shares of the "Common"

stock of said Consolidated Printing and Publishing Company in consideration of the transfer and conveyance to said Consolidated Printing and Publishing Company of the business, good will, subscription lists, contracts, contractual rights and other intangible assets of said Legal Publishing Company.

(Note: It will be observed that the number of shares of the "Class B" preferred stock and "Common" stock to be issued to said The Daily Journal Company and said Legal Publishing Company have been reduced from the number of shares mentioned in said contract, a copy of which is hereto attached and marked "Exhibit E" by the number of shares which each of said companies were to transfer under said contract, "Exhibit F", to Dan W. Green, Elmer G. Riggins, Marie McManus and Katheryn G. Lawson, and the number of shares each of said companies were to transfer under said contract, a copy of which is hereto attached and marked "Exhibit G", to Dan W. Green for his one-half interest in said Los Angeles Review.)

Fifth: To issue to Dan W. Green, Elmer G. Riggins, Marie McManus and Katheryn G. Lawson collectively 281.25 shares of said "Class B" preferred stock and 163.10 shares of "Common" stock, pursuant to the terms of said contract, copy of which is hereto attached, marked Exhibit "F", in consideration of the conveyance by them of their three-fourth interest in and to said California Independent, said newspaper, the other one-fourth interest having heretofore been and being owned by said Legal Publishing Company, and which said other one-fourth interest is to be conveyed to said Consolidated Printing and Publishing Company as a part of the consideration for the

issuance to said Legal Publishing Company of the "Class B" preferred stock and the "Common" stock hereinabove mentioned. Sixth: To issue to Dan W. Green pursuant to the terms of that certain contract, a copy of which is hereto attached, marked Exhibit "G", 375 shares of said "Class B" preferred stock and [118] 217.70 shares of the "Common" stock, in consideration of the conveyance by said Dan W. Green of his one-half interest in and to the business and assets of said Los Angeles Review, and for such further order in the premises as to the Honorable Commissioner may seem meet.

CONSOLIDATED PRINTING AND PUBLISHING
COMPANY, A Corporation,

By:
ITS PRESIDENT.

ATTEST:

.....
ITS SECRETARY.

WE hereby join in the foregoing Petition.

.....
.....
.....
.....
.....
.....
.....

Directors of
CONSOLIDATED PRINTING AND PUBLISH-
ING COMPANY.

[119]

STATE OF CALIFORNIA)
) SS.
 COUNTY OF LOS ANGELES)

DOUGLAS W. WILSON and DAN W. GREEN, President and Secretary respectively of "CONSOLIDATED PRINTING AND PUBLISHING COMPANY", a corporation, each for himself deposes and says: That said Douglas W. Wilson is the President of and said Dan W. Green is the Secretary of said "Consolidated Printing and Publishing Company", said corporation; that they and each of them have read the foregoing Petition and the Exhibits thereto attached and know the contents thereof; that the same is true and are true of their own knowledge; that the various exhibits thereto attached correctly set forth the various proceedings had at the time they were had and in the manner in which they were had.

SUBSCRIBED and SWORN to before me this
 day of SEPTEMBER, 1929.

 NOTARY PUBLIC in and for the County
 of Los Angeles, State of California.

[120]

“EXHIBIT B”

MINUTES OF FIRST MEETING OF ORGANIZERS
AND SUBSCRIBERS OF STOCK OF
“CONSOLIDATED PRINTING AND PUBLISHING
COMPANY”

held at Los Angeles, California, on the 2nd day of August, 1929 at the hour of 2:00 o'clock P. M. of said day, pursuant to the following consent and waiver of notice, to-wit:

We, the undersigned, being all of the organizers and subscribers to stock of “Consolidated Printing and Publishing Company” hereby give our written consent to the holding of the first meeting of the organizers and subscribers to stock of said Company at Suite 718 Citizens National Bank Building, in the City of Los Angeles, County of Los Angeles, State of California, on the 2nd day of August, 1929, at the hour of 2:00 P. M. of said day for the purpose of accepting and rectifying the Articles of Incorporation filed by the organizers, rectifying the appointment of the directors named therein, adopting By-Laws, accepting resignations of directors, filling vacancies on the board of directors, and for such other business as may come before the said meeting.

Dated the 2nd day of August, 1929.

NAME

NUMBER OF SHARES
SUBSCRIBED BY

K. G. LAWSON	10 shares
HAROLD C. JOHNSTON	10 shares
WILLIAM B. FRANKLIN	10 shares
GEORGE M. DERY	10 shares
C. F. BROWN	10 shares
W. E. McCLINTOCK	10 shares
J. F. SHEPHERD	10 shares

[121]

Present:

K. G. Lawson
Harold C. Johnston
William B. Franklin
George M. Dery
C. F. Brown
W. E. McClintock
J. F. Shepherd.

Mr. W. E. McClintock was requested to act as chairman of the meeting and Harold C. Johnston as temporary secretary.

The chairman announced that Articles of Incorporation had been executed and filed in the office of the Secretary of State and in the office of the County Clerk of Los Angeles County and a certificate of incorporation had been issued by the Secretary of State, which said certificate and a copy of said articles of incorporation were thereupon presented and read to the meeting, and upon motion of director C. F. Brown, seconded by director K. G. Lawson, duly put and unanimously carried, it was:

“RESOLVED, that the action of the organizers of this Company in filing Articles of Incorporation as read before the meeting be, and the same is hereby approved and ratified, and that the certificate of incorporation and a copy of said Articles as read be filed in the records of the Company and that the appointment of the persons named in the said Articles of Incorporation, to-wit: K. G. Lawson, Harold C. Johnston, William B. Franklin, George M. Dery, C. F. Brown, W. B. McClintock and J. F. Shepherd as directors for the first year or until their successors are elected, be and the same is hereby ratified and approved.”

The Chairman announced that the next business in order was the adopting of a code of By-laws, and the Secretary pro tem thereupon presented and read the code of By-laws.

Whereupon, on motion of director J. F. Shepherd, seconded by director George M. Dery, duly put and unanimously carried, it was: [122]

“RESOLVED, that the code of By-Laws as read by the Secretary be and the same is hereby adopted as the By-laws of this company and that the said By-laws as read by the Secretary be engrossed in a book to be known as the Company’s Book of By-Laws, and when so engrossed in said book the directors and duly elected Secretary of this Company be requested to certify the same.”

Director K. G. Lawson tendered her written resignation as a director of this Corporation, which resignation upon motion of director Harold C. Johnston, seconded by director C. F. Brown, duly put and carried was accepted to take effect at once.

Thereupon, upon motion of director W. E. McClintock, seconded by Director Harold C. Johnston duly put and carried, Dan W. Green was elected a director of this corporation in the place of said director K. G. Lawson resigned, and took his seat on the board of directors as such.

Thereupon director Harold C. Johnston tendered his written resignation as a director and upon motion of director William B. Franklin, seconded by director J. F.

Shepherd, duly put and unanimously carried said resignation was accepted to take effect at once.

Upon motion of director Dan W. Green said Harold C. Johnston was requested to continue to act as temporary secretary of this meeting until the conclusion thereof and consented to so do.

Thereupon on motion of director Dan W. Green, seconded by director W. E. McClintock, duly put and unanimously carried, Douglas W. Wilson was unanimously elected to fill the vacancy on said board and took his seat on said board.

Thereupon director William B. Franklin tendered his written resignation as a director, which resignation was upon motion of director George M. Dery, seconded by director C. F. Brown, duly put and unanimously carried, and accepted to take effect at once. [123]

Thereupon, upon motion of director W. E. McClintock, seconded by director J. F. Shepherd, duly put and unanimously carried, C. A. Page was elected to fill the vacancy caused by the resignation of said William B. Franklin as a director and took his seat on said board.

Thereupon, director George M. Dery tendered his resignation as such director, which resignation was upon motion of director C. F. Brown, seconded by director W. E. McClintock, duly put and unanimously carried, accepted to take effect at once.

Thereupon, on motion of director Douglas W. Wilson, seconded by director Dan W. Green, Walter F. Haas was

unanimously elected to fill the said vacancy caused by the resignation of said George M. Dery and took his place on said board as such director.

Thereupon, Director C. F. Brown tendered his written resignation as a director and upon motion of director Dan W. Green, seconded by director Walter F. Haas, duly put and unanimously carried, said resignation was accepted to take effect at once.

Thereupon, on motion of director C. A. Page, seconded by director Douglas W. Wilson, duly put and unanimously carried, G. V. Allen was unanimously elected to fill the vacancy on said board caused by the resignation of said director C. F. Brown and took his place on said board.

Thereupon, director W. E. McClintock tendered his written resignation as a director to take effect at once, which resignation was on motion of director Walter F. Haas seconded by director Dan W. Green, unanimously accepted to take effect at once.

Upon motion duly put and unanimously carried, W. E. McClintock was requested to continue to act as temporary chairman of this meeting until the conclusion thereof, and consented to so do.

Thereupon, on motion of director Walter F. Haas, seconded by director Douglas W. Wilson, William W. Roe was unanimously elected a director [124] to fill the vacancy caused by the resignation of W. E. McClintock but did not immediately take his seat on said board due

to the incumbency of said W. E. McClintock as temporary chairman of this meeting.

Thereupon, director J. F. Shepherd tendered his resignation as a director, which resignation was upon motion of director C. A. Page, seconded by director G. V. Allen, duly put and unanimously carried, accepted to take effect at once.

Thereupon, on motion of director Douglas W. Wilson, seconded by director Walter F. Haas, duly put and unanimously carried, Alfred A. McDowell was unanimously elected to fill the said vacancy so caused by the resignation of J. F. Shepherd and took his seat on said board.

On motion duly made, seconded and carried, the meeting was declared adjourned.

Approved W. E. McClintock
Temporary Chairman.

Harold C. Johnston
Temporary Secretary.

FIRST MEETING OF DIRECTORS OF THE
"CONSOLIDATED PRINTING AND PUBLISH-
ING COMPANY", a corporation, held at 718 Citi-
zens National Bank Building, Los Angeles, Califor-
nia, on the 2nd day of August, 1929, at the hour of
3:15 o'clock P.M. of said day, pursuant to the fol-
lowing written consent and waiver of notice. [125]

“EXHIBIT E”

THIS AGREEMENT made and entered into this 20th day of June, 1929 by and between THE DAILY JOURNAL COMPANY, a corporation duly incorporated under the laws of the State of California and having its principal place of business at the City of Los Angeles, County of Los Angeles, State of California, party of the first part, and LEGAL PUBLISHING COMPANY, a corporation, likewise organized under the laws of the State of California and having its principal place of business at the City of Los Angeles, County of Los Angeles, State of California, party of the second part,

W I T N E S S E T H:

Whereas, said party of the first part now is and for many years last past has been actively engaged in printing and publishing a daily newspaper in the City of Los Angeles, County of Los Angeles, State of California known as “The Los Angeles Daily Journal” and,

Whereas, said second party now is and for some years last past has been actively engaged in printing and publishing a daily newspaper in the City of Los Angeles, County of Los Angeles, State of California, known as “The Los Angeles News”, and

Whereas, each of said newspapers is largely devoted to the same kind of publication, to-wit, legal, and

Whereas, each of said parties now has a plant devoted to such publication and a subscription list as well as a more or less fixed clientele and patronage; and

Whereas, said parties are desirous of and deem it for the best interests of all concerned to consolidate their said properties; and

Whereas, such consolidation is pursuant to a general plan of reorganization; [126]

NOW THEREFORE, in consideration of the premises and the covenants hereinafter set forth, said parties hereby covenant and agree to form a new corporation either under the laws of the State of California or some other State to be mutually agreed upon, with a capital stock to consist of the following numbers and kind of shares of stock, to-wit: fifteen hundred (1500) shares of the par value of \$100.00 each of "Class A" cumulative preferred stock to bear interest at the rate of 7% per annum, to have the preference as to dividends and under liquidation of all other preferred as well as common stock and to be subject to redemption, cancellation and retirement at any time after one (1) year from the date of its issuance upon payment of its par value and accrued interest; five thousand (5,000) shares of "Class B" preferred stock par value \$100.00 each to bear interest at the rate of 20% per annum, to be cumulative, to have preference as to dividends and liquidation over the common stock but to be subordinate to said "Class A" preferred stock and to be not subject to redemption, cancellation or retirement; three thousand five hundred (3,500) shares of common stock without par value, to bear no fixed interest or dividends and to be not subject to redemption.

All three (3) classes of stock to be vested with equal voting power.

As soon as said corporation shall have been fully organized and the permit of the corporation Commissioner of the State of California, if said corporation be organized under the laws of the State of California, shall have been

procured therefor, or if said corporation shall be organized under the laws of another state, then when all of the laws of said other state and of said State of California relating to the issuance of said [127] stock shall have been complied with, said stock shall be issued and delivered as follows: To said Daily Journal Company so many of the shares of said "Class A" preferred stock as the same at par shall represent and equal the reasonable value of the physical properties of the plant of said Daily Journal Company devoted to the printing and publication of said "The Los Angeles Daily Journal" there shall be issued to said Legal Publishing Company so many of shares of said "Class A" preferred stock as the same at par shall represent and equal the reasonable value of the physical properties of the plant of said Daily Journal Company devoted to the printing and publishing of said "The Los Angeles Daily Journal" there shall be issued to said Legal Publishing Company so many of shares of said "Class A" preferred stock as the same at par shall represent and equal the reasonable value of the physical property that said Legal Publishing Company is now using in its plant for printing and publishing said "The Angeles News", it being nevertheless understood that said Legal Publishing Company shall have the right to retain such portion of said physical properties as it sees fit for use in the publication of other non-competing periodicals or publications.

It is further understood that included in the term physical assets to be turned over to said new company by said Legal Publishing Company for the purposes hereof, is included the shares or interest that said Legal Publishing Company owns in that certain co-partnership known as the California Independent.

It is hereby further covenanted and agreed that in consideration of the "Class B" preferred stock and the common stock to be delivered to the Daily Journal Company as hereinafter set forth, said Daily Journal Company shall sell, assign, transfer and set over to said new corporation the business and good will including subscription lists, advertising lists, incompleted advertising contracts, incompleted printing [128] contracts and incompleted publication contracts from and after the 1st day of July, 1929 of that certain newspaper known and designated as The Los Angeles Daily Journal printed, published and circulated in the City of Los Angeles, County of Los Angeles, State of California, and also the good will and business including subscription lists, advertising lists, incompleted advertising contracts, incompleted publication contracts and incompleted business of that certain newspaper owned by said Daily Journal Company known and designated as "The Daily Recorder" printed, published and circulated in the City of Los Angeles, County of Los Angeles, State of California.

It is hereby further covenanted and agreed that for and in consideration of the "Class B" preferred stock and common stock to be issued and delivered to said Legal Publishing Company as hereinafter set forth, said Legal Publishing Company shall sell, assign, transfer and set over to said new corporation the good will and business of said newspaper printed, published and circulated in the City of Los Angeles, County of Los Angeles, State of California, known and designated as "The Los Angeles News" together with all subscription lists, advertising contracts, incompleted advertising contracts, incompleted publications contracts, incompleted printing contracts and in-

completed business generally of said The Los Angeles News, and shall also sell, assign, transfer and set over to said new corporation that certain newspaper or publication printed, published and —— circulated in the City of Los Angeles, County of Los Angeles, State of California, known and designated as the "Greater Los Angeles" together with its subscription lists, incompleted advertising contracts, incompleted printing contracts, incompleted publication contracts and incompleted business generally.

It is hereby further mutually covenanted and agreed that the said new corporation shall complete all unfinished printing and publishing required under such incompleted contracts of each of the publications or [129] newspapers hereinabove referred to, and that if such business shall have been procured and such contracts made for such advertising, printing or publication prior to July 1st, 1929, the party hereto which has procured such business and commenced such publication or printing shall be entitled to collect the charges therefor, and that said new corporation shall not make any charge to or against the company originating said business for completing such publications.

It is hereby further covenanted and agreed that the executive officers of said new corporation shall not charge or receive any salary for their services rendered to said corporation unless otherwise ordered by the affirmative vote of all of the members of the Board of Directors of said new corporation.

In consideration of the premises and of the said several assignments, the said "Class B" preferred stock shall be issued to and delivered to, first: 3,750 shares thereof to said Daily Journal Company, and 1250 shares thereof to said Legal Publishing Company, and the said common

stock shall be issued to and delivered to the said respective parties, as follows: 2,625 shares thereto to said Daily Journal Company and 875 shares thereof to said Legal Publishing Company.

It is hereby further covenanted and agreed that neither the said Daily Journal Company nor the said Legal Publishing Company, nor the stockholders thereof, nor the said other publications owned by said two companys hereinabove referred to, except said California Independent, shall directly or indirectly enter into any competition with said new corporation for business of the character and kind heretofore done by said Daily Journal Company and said Legal Publishing Company insofar as the same pertains to the printing, publishing and circulating any newspaper or periodical for legal advertising, except as may be from time to time mutually agreed upon in writing. [130]

It is hereby further covenanted and agreed that at the option of said newly organized company, it may continue the publication of said The Los Angeles Daily Journal and the publication of said The Los Angeles News through the corporate organizations heretofore publishing said papers, for such length of time as said new corporation may deem advisable and for that purpose be permitted to use the name and organization of each of said companys, provided that in that event said new corporation shall pay any taxes and licenses required to be paid by said respective companys during said period.

It is hereby further covenanted and agreed that said new corporation shall have ample powers and the Articles of Incorporation shall so specify to enable it to carry out all of the foregoing plans and purposes, to engage in the

printing and publishing business; to buy and sell stock in other corporations; to own patents and patent rights; to own franchises for publications, and the obtaining and circulation of news items, and in brief, all powers usually and ordinarily had by first class newspaper corporations, including the power to buy and sell the necessary real estate for its operations.

It is hereby further covenanted and agreed that neither of the contracting parties shall sell any of the stock that may be to them issued pursuant to the terms hereof in the said new corporation without having first given to the other contracting party sixty (60) days written option to purchase such stock so intended to be sold, at a price equal to any bona fide offer that may have been made to the selling party for such stock.

It is hereby further covenanted and agreed that from and after July 1st, 1929, all collections for unfinished business of each of the contracting parties up to, or contracted prior to the 1st day of July 1929, shall be made through said new corporation, or by a trustee to be appointed by the parties hereto for said purpose if the organization of said [131] new corporation shall not have been completed, for the interim up to the time the organization of said new corporation shall have been completed pursuant hereto, and that for all such moneys so collected through said Trustee or said new corporation for such business contracted for and unfinished by July 1, 1929 and retained by said new corporation, said new corporation being hereby authorized to retain the same, or said trustee on its behalf to retain the same until the organization of said new corporation shall have been perfected, shall be issued to the contracting party to whom said money belongs under the provisions

of this agreement, Class A stock at par equal to the amounts so collected and retained.

It is hereby further covenanted and agreed that in the ascertainment of the reasonable value of the physical properties to be so assigned and transferred to said new corporation by each of the contracting parties hereto, said contracting parties shall endeavor to agree so far as possible, but that if they shall fail to agree, each of said contracting parties shall nominate and appoint an appraiser who shall respectively appraise said properties and if said two appraisers shall fail to agree, said appraisers shall have the right to appoint a third appraiser or umpire and the written determination or appraisal of any two out of said three appraisers shall be taken as the basis for the issuance of said "Class A" preferred stock in payment of such physical properties.

It is hereby further covenanted and agreed that said new corporation shall, at its option, be entitled to receive from each of the contracting parties an assignment and transfer insofar as said contracting party can make such assignment and transfer, of any contractual rights that the said contracting party may have appertaining to the printing and publishing of legal advertising of all kinds in the present newspapers operated by and published by said contracting parties hereinabove expressly mentioned and to be transferred to said new corporation, and also any contracts and [132] contractual rights said contracting party may have with its employees or any employee of said contracting party.

It is hereby further covenanted and agreed that each of the said contracting parties and the stockholders of said contracting parties so far as the same can be bound by

this agreement, will use their best efforts and endeavors to further and promote the business of said new corporation.

It is hereby further covenanted and agreed that W. E. Roe be, and he is hereby appointed the Trustee for the collection of the accounts for such unfinished business contracted prior to July 1, 1929 by the respective parties hereinabove referred to, and to dispose of such collections in the manner hereinabove set forth.

IN WITNESS WHEREOF, the said respective corporations have pursuant to resolutions by them respectively adopted, caused these presents to be executed in duplicate by their respective Presidents and to be attested by their respective Secretaries and the seals of said respective corporations to be hereunto affixed the day and year hereinabove first written.

DAILY JOURNAL COMPANY,
A Corporation,

By
Its President.

ATTEST:

.....
Its Secretary.

LEGAL PUBLISHING COMPANY,
A Corporation,

By
Its President.

ATTEST:

.....
Its Secretary.

[133]

"EXHIBIT C"

We, the undersigned, being all of the directors of the "Consolidated Printing and Publishing Company" hereby consent to the holding of the first meeting of the Board of Directors of said Company at 718 Citizens National Bank Building, Los Angeles, California, on the 2nd day of August, 1929, at the hour of 2:15 o'clock P. M. of said day, for the purpose of organizing the board, electing officers and transacting such other business as may properly come before the board, and we hereby waive further notice of the time and place of such meeting.

Dated at Los Angeles, California, the 2nd day of August, 1929.

Dan W. Green
Douglas W. Wilson
C. A. Page
Walter F. Haas
G. V. Allen
William W. Roe
Alfred A. McDowell.

Present: Douglas W. Wilson, Walter F. Haas, William W. Roe, Dan W. Green, C. A. Page, G. V. Allen and Alfred A. McDowell.

Mr. Douglas W. Wilson was requested to act as chairman of the meeting and appointed Mr. William W. Roe as temporary Secretary.

The temporary Secretary read the code of By-laws adopted by the stockholders, and on motion of director

Walter [134] F. Haas, seconded by director C. A. Page, duly put and unanimously carried, it was:

“RESOLVED, that each member of the Board of Directors and duly elected Secretary of the Company be, and they are hereby requested to subscribe their names to the said By-laws and to certify the same in the book of By-laws.”

Thereupon, on nominations regularly made, duly put and unanimously carried, the following persons were elected and declared to be the officers of this Company until the further order of this Board, to-wit:

Douglas W. Wilson	President
C. A. Page	First Vice-President
Walter F. Haas	Second Vice-President
William W. Roe	Treasurer
Dan W. Green	Secretary.

On motion duly made, seconded and carried, it was:

“RESOLVED, that the forms for the stock certificates covering the several kinds of stock of this corporation, to-wit: “Class A” preferred stock, “Class B” preferred stock and “Common” stock, read by the Secretary be, and the same are hereby adopted for the use of this Company, and that the Secretary be, and he is hereby authorized and directed to procure a book of stock certificates in the form presented and read by him and also the necessary record books for the use of the company and that the Secretary be, and he is hereby authorized and directed to procure a seal having thereon the words and figures provided for in the By-laws.”

Upon motion of director Dan W. Green, seconded by director Alfred A. McDowell, duly put and unanimously carried, the following resolution was adopted:

“RESOLVED, that the California Bank, a banking corporation, doing business in the City of Los Angeles, County of Los Angeles, State of California, be and the same is here- [135] by selected as the depository of all funds of this Corporation.”

Upon motion of director William W. Roe, seconded by director C. A. Page, duly put and unanimously carried, it was:

RESOLVED, that a regular checking account be opened by this Corporation with California Bank, a banking corporation, doing business at the City of Los Angeles, County of Los Angeles, State of California, and that all checks of this corporation, drawn on the same shall be signed by the President or one of the Vice Presidents and countersigned by the Secretary.”

Upon motion of director Walter F. Haas, seconded by director C. A. Page, the following resolution was adopted:

“RESOLVED, that a petition or application be made on behalf of this Corporation to the Corporation Commissioner of the State of California for leave to issue to The Daily Journal Company, a corporation, duly incorporated under the laws of the State of California, in consideration of the transfer and conveyance by the said The Daily Journal Company to the Consolidated Printing and Publishing Company of certain tangible assets and properties of the said The Daily Journal Company, particularly described in an inventory filed with the Secretary of said Consolidated Printing and Publishing Company, shares of the “Class A” preferred stock of said Consolidated Printing and Publishing Company;

also to issue to Legal Publishing Company in consideration of the transfer and conveyance to said Consolidated Printing and Publishing Company of certain tangible assets described in an inventory filed with the Secretary of said Consolidated Printing and Publishing Company shares of the "Class A" preferred stock of said Consolidated Printing and Publishing Company; also to issue to said The Daily Journal Company in consideration of the transfer, assignment and conveyance by said The Daily Journal Company to said Consolidated Printing and Publishing Company of the good will, business, franchises, subscription lists, advertising lists and other properties mentioned and referred to in that certain contract dated the 20th day of June, 1929, made and entered into by and between The Daily Journal Company, a corporation, as party of the first part, and Legal Publishing [136] Company, a corporation, as part of the second part, 3,750 shares of the "Class B" preferred stock of said Consolidated Printing and Publishing Company; also to issue to Legal Publishing Company, in consideration of the transfer, assignment and conveyance by said Legal Publishing Company to said Consolidated Printing and Publishing Company of the good will, business, franchises, subscription lists and other assets to be transferred to said Consolidated Printing and Publishing Company as recited in that certain contract so dated the 20th day of June, 1929, made and entered into between The Daily Journal Company, a corporation, as party of the first part, and Legal Publishing Company, a corporation, as party of the second part, 1250 shares of said "Class B" preferred stock of said Consolidated Printing and Publishing Company; also in consideration of the said transfer of said business, good will, and assets hereinabove mentioned by said The Daily Jour-

nal Company, to issue to said The Daily Journal Company 2625 shares of the common stock of said Consolidated Printing and Publishing Company; also to issue to said Legal Publishing Company in consideration of the transfer, assignment and conveyance of said business, good will and assets hereinabove recited to be conveyed to said Consolidated Printing and Publishing Company 875 shares of the "Common" stock of said Consolidated Printing and Publishing Company. That of the said stock so to be issued to said The Daily Journal Company, said corporation, as aforesaid, to be transferred to Dan W. Green, Marie McManus, Katheryn G. Lawson and Elmer G. Riggin in consideration of the transfer and conveyance by them to said Consolidated Printing and Publishing Company of all of the interests held by said persons in a certain newspaper and its assets, printed and published at Los Angeles, California, known and designated as "California Independent", 210.9375 shares of said "Class B" preferred stock and 122.325 shares of said "Common" stock, and out of said stock to be issued to said Legal Publishing Company as aforesaid, there is to be transferred and issued to said persons, to-wit: Dan W. Green, Marie McManus, Katheryn G. Lawson and Elmer G. Riggin 70.3125 shares of "Class B" preferred stock and 40.775 shares of "Common" stock. That likewise out of the said stock so to be issued to said The Daily Journal Company, there is to be issued to Dan W. Green in consideration of the sale, assignment and transfer by the said Dan W. Green to said Consolidated Printing and Publishing Company of the one-half ($\frac{1}{2}$) interest of the said Dan W. Green in and to a certain newspaper and its plant known and designated as "Los Angeles Review" printed and published [137] at the City of Los Angeles, County of Los An-

ges, State of California, 281.25 shares of "Class B" preferred stock and 163.275 shares of the "Common" stock, and by said Legal Publishing Company 93.75 shares of said "Class B" preferred stock and 54.425 shares of said "Common" stock.

BE IT FURTHER RESOLVED, that said Corporation Commissioner be requested to permit the sale of all of the remainder of the "Class A" preferred stock at its par value, without the payment of any brokerage, the moneys derived from such sale to be placed in the treasury of this Company and to be used in the same manner as other moneys used in the business of and for the development of this Company, and

BE IT FURTHER RESOLVED, that the President and Secretary and directors of this Company be authorized to take such steps and to execute such documents in the name of this Company as may be necessary or convenient to obtain from the Corporation Commissioner the permit hereinabove referred to."

Upon motion of Dan W. Green, seconded by director C. V. Allen, the following resolution was unanimously adopted, to-wit:

"RESOLVED, that the firm of Haas and Dunnigan, attorneys at law, be and the same are hereby retained as the attorneys for said Consolidated Printing and Publishing Company at a retainer of One Hundred (\$100.00) Dollars per month dating from the 1st day of July, 1929,"

There being no further business to come before the meeting, the same was declared adjourned.

APPROVED: Douglas W. Wilson

ATTEST:

President.

Dan W. Green

Secretary

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“EXHIBIT F”

THIS AGREEMENT made and entered into this 29th day of JUNE, 1929 by and between THE DAILY JOURNAL COMPANY, a corporation, and LEGAL PUBLISHING COMPANY, a corporation, each organized and existing under the laws of the State of California, and each having its principal place of business at the City of Los Angeles, County of Los Angeles, State of California, parties of the first part, and DAN W. GREEN, ELMER G. RIGGINS, MARIE McMANUS and KATHERYN G. LAWSON, all of the City of Los Angeles, County of Los Angeles, State of California, parties of the second part,

W I T N E S S E T H:

Whereas, said Daily Journal Company, a corporation and said Legal Publishing Company, a corporation, have heretofore, to-wit, on the 20th day of June, 1929, made and entered into a contract in writing for the formation of a new corporation to be known as “CONSOLIDATED PRINTING AND PUBLISHING COMPANY” under the laws of the State of California, with its principal place of business at the City of Los Angeles, and for the conveyance to said corporation of certain tangible and intangible properties of said respective corporations in said contract mentioned to said new corporation; said new corporation to have three (3) classes of stock, to-wit: “Class A” preferred stock, “Class B” preferred stock and “Common Stock”; the terms and conditions of which said contract are known to all of the parties hereto; and

Whereas, said Second Parties are the owners of the following interests in a certain newspaper and its assets,

known and designated as "California Independent" printed and published at the City of Los Angeles, County of Los Angeles, State of California, to-wit: Dan W. Green, a one-quarter ($1/4$) interest; Marie McManus, a one-sixth ($1/6$) interest; Katheryn G. Lawson, a one-sixth ($1/6$) interest and Elmer G. Riggins, a one-sixth ($1/6$) interest; the other one-quarter ($1/4$) interest belonging [139] to said Legal Publishing Company, and being covered by said contract between said Daily Journal Company and said Legal Publishing Company, hereinabove referred to; and

Whereas, said Second Parties are willing to convey said California Independent and its properties to said "Consolidated Printing and Publishing Company", said corporation about to be formed, as soon as the same is formed, for the consideration hereinafter named; such conveyance to be made pursuant to a general plan of reorganization.

NOW THEREFORE, this Agreement Witnesseth:

That as soon as said "Consolidated Printing and Publishing Company" shall have been organized and authorized to issue its capital stock and shall have a permit to so do, said Parties of the Second Part will sell, assign, transfer and set over unto said "Consolidated Printing and Publishing Company," said corporation, all their right, title, interest and estate in and to said newspaper, said "California Independent", together with its contracts, contractual rights, good will and office furniture and equipment, and will execute all documents necessary or con-

venient to so do, in consideration of which said parties of the First Part covenant and agree that they will respectively assign and transfer to said Second Parties collectively, or segregate among said Second Parties as directed in writing the following stock in said "Consolidated Printing and Publishing Company", to-wit: Said Daily Journal Company 210.9375 shares of "Class B" preferred stock and 122.325 shares of Common Stock, and said Legal Publishing Company 70.3125 shares of stock said "Class B" preferred stock and 40.775 shares of said common stock.

It is hereby further covenanted and agreed that said Second Parties will assign to W. W. Roe, who is hereby appointed Trustee for all the parties hereto for that purpose all the book accounts and bills receivable of said "California Independent" for any work commenced or advertising started prior to the 1st day of July, 1929, and as the same [140] are collected by said W. W. Roe, the money derived from such collections shall be turned into the Treasury of said "Consolidated Printing and Publishing Company" to be by it retained and "Class A" preferred of said "Consolidated Printing and Publishing Company" shall be issued to said Second Parties or upon their order in amounts at par equal to three-fourths ($\frac{3}{4}$) of such collections. Said W. W. Roe shall continue to act as such Trustee to collect all accounts and bills receivable for work done or advertising contracted by said California Independent subsequent to July 1st, 1929 and up to the full organization of said "Consolidated Printing and Publish-

ing Company” and out of such collections pay all operating expenses of said “California Independent” during the interim, turning over the balance if any, to said “Consolidated Printing and Publishing Company”. Should such collections be insufficient to pay such operating expenses, the deficit shall be paid by said “Consolidated Printing and Publishing Company” when the same shall have been organized.

It is hereby further covenanted that all accounts are to be audited as of July 1st, 1929 and that pending the completion of said organization of said “Consolidated Printing and Publishing Company” W. W. Roe shall act as trustee of the Parties hereto for the collection of all accounts, bills and notes receivable of said “California Independent” and shall out of such sums so collected, pay the current operating expenses and salaries of said “California Independent” pending the final consummation of this agreement.

It is hereby further covenanted and agreed that insofar as the same has a bearing upon or affects the carrying out of this contract, the terms, covenants and conditions of said contract between said Daily Journal Company and said Legal Publishing Company shall be deemed a part hereof.

IN WITNESS WHEREOF, said First Parties have each caused this agreement to be executed in its respective corporate name by its [141] President or Vice President and its corporate seal to be hereunto affixed by its Secre-

tary pursuant to resolutions adopted by its respective Board of Directors and said Second Parties have hereunto set their hands and seals, and these presents have been executed in triplicate the day and year hereinabove first written.

DAILY JOURNAL COMPANY,

By:

Its President

ATTEST:

.....

Its Secretary

LEGAL PUBLISHING COMPANY

By:

Its President.

ATTEST:

.....

Its Secretary

..... (SEAL)

..... (SEAL)

..... (SEAL)

..... (SEAL)

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“EXHIBIT G”

THIS AGREEMENT made and entered into this 29th day of June, 1929, by and between DAILY JOURNAL COMPANY, a corporation, and LEGAL PUBLISHING COMPANY, a corporation, each organized and existing under the laws of the State of California, and each having its principal place of business at the City of Los Angeles, County of Los Angeles, State of California, parties of the first part, and Dan W. Green of the same place, party of the second part,

W I T N E S S E T H :

Whereas, said Daily Journal Company and said Legal Publishing Company have heretofore, to-wit: on the 20th day of June, 1929, made and entered into a contract in writing with each other whereby and whereunder a new corporation, to be known as “Consolidated Printing and Publishing Company” is to be organized under the laws of the State of California, with three (3) classes of stock, to-wit “Class A” preferred stock, “Class B” preferred stock and “Common Stock” to which said new corporation each of said corporations, parties of the first part herein, are to convey certain properties in said contract described, in consideration of the issuance to each of such parties of the first part herein of certain of the stock of said “Consolidated Printing and Publishing Company” when the same shall have been fully organized and the permit therefore obtained from the Corporation Commissioner of the State of California, the terms, covenants and conditions of which said contract are known to all the parties hereto; and

Whereas said second party is the owner of an undivided one-half interest in and to a certain newspaper and its

plant known and designated as "Los Angeles Review", printed and published at the City of Los Angeles, County of Los Angeles, State of California, and

Whereas said second party is desirous of selling half [143] interest in and to said "Los Angeles Review" and its said "Consolidated Printing and Publishing Company" when organized and said first parties are desirous of having said "Consolidated Printing and Publishing Company" purchase the one-half interest from said second party as of July 1, 1929, for the considerations hereinafter named:—

NOW THEREFORE this Agreement Witnesseth:

That said first parties will respectively assign and transfer to said second party, as soon as the same shall have been legally issued to said first parties, the following stock of said "Consolidated Printing and Publishing Company" to-wit: an inventory shall be made of the tangible assets of said "Los Angeles Review" and the parties hereto shall endeavor to agree upon the reasonable value thereof; if said parties shall fail to agree, each of said parties shall select an appraiser to appraise the said tangible assets, and if said two appraisers shall fail to agree said two appraisers shall select a third appraiser or umpire and the written appraisal of any two out of said three appraisers shall be binding on the parties hereto and shall constitute the basis of the amount of "Class A" preferred stock to be issued to such second party and there shall be issued to said second party in "Class A" preferred stock of said "Consolidated Printing and Publishing Company" equal at par to one half the said appraised value of said tangible assets. Said "Class A" preferred stock so issued to said Second Party shall be issued out of the Treasury Stock

of said "Consolidated Printing and Publishing Company. There shall likewise be assigned and transferred to said second party out of the stock to first parties in said "Consolidated Printing and Publishing Company" pursuant to said contract of June 20th, 1929 hereinabove mentioned, in the proportions of three-fourths ($3/4$) thereof by said Daily Journal Company, said corporation, and one-fourth ($1/4$) thereof by said Legal Publishing Company three hundred and seventy-five (375) shares of "Class B" preferred stock; there shall likewise be assigned and transferred out of the "Common [144] Stock" issued to said first parties under said contract of June 20, 1929, by said Daily Journal Company 163.275 shares and by said Legal Publishing Company 54.425 shares.

In consideration of such assignment and transfer to said Dan W. Green said second party, he hereby covenants and agrees to sell, assign and transfer to said "Consolidated Printing and Publishing Company" his one-half interest in and to said "Los Angeles Review" its business and assets, including the tangible assets, book accounts, arising out of business contracted for after July 1, 1929, bills receivable, good will, trade name and any and all property of the copartnership in said "Los Angeles Review" heretofore and now existing between said Dan W. Green and George P. Reuter, it being understood that said George P. Reuter retains his one-half interest in and to the same.

In further consideration of the premises and the sum of \$10.00 per annum to be said second party paid by said

“Consolidated Printing and Publishing Company” said second party covenants and agrees that he will for the period of five (5) years from and after the 1st day of July, 1929 devote his time and personal attention as heretofore to the management and operation, subject to the control of the Board of Directors of said “Consolidated Printing and Publishing Company”, of said “Los Angeles Review”, said newspaper, and also of the “California Independent” in which said Dan W. Green said second party heretofore had a one-quarter ($1/4$) interest, which he has agreed to convey to said “Consolidated Printing and Publishing Company,” it being understood that in addition to said \$10.00 he has received 125 of the 375 shares of “Class B” preferred stock as full compensation for such services so to be rendered.

In further consideration of the premises said second party covenants and agrees that so long as said “Consolidated Printing and Publishing Company” shall continue in business in the County of Los Angeles, State of California, said second party will not engage in a [145] similar line of business in said County in competition with said “Consolidated Printing and Publishing Company.”

It is further covenanted and agreed that, insofar as the same relate to or affect the terms of this contract, all provisions contained in said contract so made and entered into on the 30th day of June, 1929 by and between said Daily Journal Company and said Legal Publishing Company, shall be deemed to be incorporated herein.

It is further understood and agreed that said assignment and transfer by second party includes all rights of second party in, to and under the lease of the premises occupied by said "Los Angeles Review" and all benefits that may accrue from the same.

IN WITNESS WHEREOF, said first parties have caused these presents to be executed in their corporate seals to be hereto affixed by their respective Secretaries and said second party has hereunto set his hand and seal and these presents have been executed in triplicate the day and year first above written.

DAILY JOURNAL COMPANY

By
Its Vice-President.

ATTEST:

.....
Its Secretary.

LEGAL PUBLISHING COMPANY

By
Its President.

ATTEST:

.....
Its Secretary.

..... (SEAL)

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EXHIBIT "H"

THIS AGREEMENT made and entered into this 3rd day of July, 1929, by and between GEORGE P. REUTER of the City of Los Angeles, County of Los Angeles, State of California, party of the first part and "DAILY JOURNAL COMPANY", a corporation, "LEGAL PUBLISHING COMPANY", a corporation, "CALIFORNIA INDEPENDENT", a copartnership and DAN W. GREEN, all of the same place, parties of the Second Part,

WITNESSETH:

WHEREAS, said first party is the owner of an undivided one-half interest in and to a certain newspaper known and designated as "Los Angeles Review", printed and published at the City of Los Angeles, County of Los Angeles, State of California, together with its business and assets, and

WHEREAS, the parties of the Second Part are about to form a corporation under the laws of the State of California, under the name of "Consolidated Printing and Publishing Company", with its principal place of business at the City of Los Angeles, County of Los Angeles, State of California, and

WHEREAS, said Dan W. Green has entered into a contract with said "Daily Journal Company" and said "Legal Publishing Company" to convey his one-half interest in and to said "Los Angeles Review" together with

its business and assets, to "Consolidated Printing and Publishing Company", when fully organized, and

WHEREAS, said First Party has now and heretofore has had an agreement with said Dan W. Green, that if said First [147] Party should desire to sell his interest in the partnership between himself and said Dan W. Green doing business as "Los Angeles Review," said First Party would at any time within thirty (30) days after receiving a bona fide offer for his interest in such "Los Angeles Review," said newspaper, and its assets, sell such interest to said Dan W. Green at the price so established by such bona fide offer or offers; and

Whereas by his said contract with said "Daily Journal Company" and said "Legal Publishing Company" for the sale of the interest of said Dan W. Green in said "Los Angeles Review" hereinabove referred to, said Dan W. Green had covenanted and agreed to devote his time and attention for the period of five (5) years from and after the 1st day of July, 1929, to the management and superintendence of the affairs and business of said "Los Angeles Review" for the compensation in said contract mentioned; and

Whereas, said First Party will receive certain benefits from the acquisition by said "Consolidated Printing and Publishing Company" of the interest of said Dan W. Green in said "Los Angeles Review";

NOW THEREFORE, in consideration of the premises said First Party hereby covenants and agrees to and

with the Second Parties that said First Party will, if he desires to sell his interest in said "Los Angeles Review" not for a period of 30 days from the date of any bona fide offer for such one-half interest or any interest in and to said "Los Angeles Review" sell the same to anyone without first having offered to sell the same to said "Consolidated Printing and Publishing Company" at the same price and on the same terms as the highest and best bona fide offer by First Party received for the same in which event said "Consolidated Printing and Publishing Company" shall have 30 days from receipt of such offer in writing from said First Party stating the price and terms of such bona fide offer made to said First Party, to purchase said one-half interest of said First Party in said copartnership, in which event said party will [148] upon receipt of the purchase price therefor sell, assign and transfer such interest to said "Consolidated Printing and Publishing Company", said corporation so to be formed.

IN WITNESS WHEREOF, said First Party has executed these presents in triplicate the day and year first above written.

..... (SEAL)

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EXCERPTS FROM THE TRANSCRIPT OF
TESTIMONY

(RE OBJECTIONS OF RESPONDENT AS
SUSTAINED)

The Member: Let the questions and answers on cross examination be included in the offer, and the deposition as a whole will be admitted in evidence.

Now, you said there was one minor exception to that general statement as to the nature of the evidence in the deposition.

Mr. Latham: I note here a question by me, for example, as to whether—

Mr. Tonjes: What page?

Mr. Latham: Page 8. This is addressed to Douglas W. Wilson:

“Q. Were your duties, when you became president in 1917, any different than those formerly performed by your father?

“Mr. Tonjes: That is objected to as being immaterial and incompetent and having no bearing on the issues.”

Now, that does not cover the general situation. I don't know that the question is of any particular importance, anyway.

The Member: It doesn't seem to me that it is pertinent, why it would make any difference whether his duties were the same.

Mr. Latham: Merely to show we had a continuous action with respect to this company from the time it was

formed up until the time of consolidation. In other words, it has been a one-man company, you might say, so far as operation is concerned, from 1895 to present.

The Member: That is going pretty far afield when we have 1936, 1937 and 1938 before us. The objection will be sustained as to that question and an exception allowed petitioner.

Mr. Latham: On page 9 this question is addressed to Mr. Wilson by me:

“Q. Since you became president of the Daily Journal Company in 1917, has the Commissioner of Internal Revenue, or any other governmental agency, ever questioned the reasonableness of the salary paid to you, except with respect to this present proceeding?”

“Mr. Tonjes: That question is objected to as being incompetent and immaterial, and having no bearing on the issues involved in this proceeding.”

It seems to me, if your Honor please, to be material in showing that no question had been raised about this until the years 1936, 1937 and 1938, even though the consolidation had occurred in 1929.

The Member: I have had that question up before me not infrequently, but the answer to that is: Let's suppose that this Commissioner in some previous year or some previous Commissioner had made some ruling, and if he was mistaken about it or had taken some line of action and was mistaken about it, we don't want to perpetuate anybody's mistakes in this world if we can help it. I think the objection is well taken. It will be sustained and an exception allowed the petitioner.

Mr. Latham: May I take a moment to glance through this and make sure I have all of the questions?

The Member: Yes, you had better do that because we will necessarily have to consider as waived all other objections except those you take up now.

Mr. Latham: I don't want to be in the position of misrepresenting anything intentionally.

Here is one on page 17 that may be of moment. I referred to a provision in the Consolidated contract of 1929, namely, that provision which read to the effect that no salary should be paid to any officer of a predecessor company without the unanimous consent of the board of directors of the new company. Then I asked this question of Mr. Wilson:

“Q. Why was that provision inserted in this contract between the Daily Journal Company and the Legal Publishing Company?

“Mr. Tonjes: That is objected to as not being the best evidence. The agreement speaks for itself, and it is incompetent and immaterial.”

I might state that nothing more is said with regard to that point. The reason does not appear anywhere in the contract or in any of the minutes which are submitted as evidence.

The Member: I think the objection is well taken. It is there, and I don't think it makes any difference why it was put in there. The objection will be sustained and an exception allowed petitioner.

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Petitioner's Exhibit One
DAILY JOURNAL COMPANY
Operations Prior to 1929

<u>YEAR</u>	<u>Gross Operating Income</u>	<u>Income before Officers' Salaries Or Income Taxes</u>	<u>Income before Income Taxes</u>	<u>Officers' Salaries</u>	<u>Dividends Paid</u>
1914	89,163.90	50,866.85	22,338.56	28,528.99	10,198.85
1915	85,886.14	48,442.83	19,174.42	29,268.41	15,871.51
1916	82,206.91	50,406.71	21,639.83	28,766.88	12,612.66
1917	80,069.67	48,782.88	31,651.07	17,131.81	48,239.83
1918	67,178.33	33,465.64	16,638.42	16,827.22	19,987.72
1919	65,125.25	30,251.41	13,485.31	16,766.10	8,866.87
1920	89,204.51	39,926.68	22,513.07	17,413.61	12,546.04
1921	94,188.23	43,149.04	24,936.10	18,212.94	9,769.48
1922	115,821.33	48,511.85	30,013.65	18,498.20	5,137.09
1923	140,818.39	64,300.27	45,512.88	18,787.39	13,789.99
1924	174,888.36	86,608.56	67,200.92	19,407.64	13,706.05
1925	170,180.02	82,666.73	62,760.62	19,906.11	8,319.30
1926	189,738.07	86,440.75	66,882.34	19,558.41	37,748.02
1927	186,442.00	61,696.88	42,392.76	19,304.12	
1928	187,033.54	58,192.50	39,803.23	18,389.27	130,000.00
1929 ¹	111,129.63	58,228.55	35,267.08	12,961.47	
Average	124,456.40	57,544.38	36,271.62	20,647.00	22,373.76

1—First half of 1929, the year of consolidation.

U. S. Board of Tax Appeals Div 4 Docket 105054 Admitted in Evidence Sep 24 1941 Petitioner's Exhibit One.

Petitioner's Exhibit Two

DAILY JOURNAL COMPANY

Operations Subsequent to 1929

YEAR	Dividends Rec'd. Consolidated Prig. and Pub. Co.	Income Carried Over from Prior Operations ¹	Interest from Banks	Other Income ²	Total Gross Income	Income Before Officers' Salaries Or Income Taxes	Income before Income Taxes	Officers' Salaries	Dividends Paid
1930	92,487.75	7,257.29	2,527.46	1,379.38	103,651.88	94,655.41	74,855.41	19,800.00	63,129.50
1931	78,176.40	1,564.66	3,525.90	1,214.94	84,481.90	82,602.39	62,152.39	20,450.00	66,924.82
1932	68,765.00	689.11	1,896.07	1,033.64	72,313.82	71,120.61	59,120.61	12,000.00	51,560.00
1933	59,182.33	631.02	1,590.12	1,063.65	62,467.12	60,056.72	48,056.72	12,000.00	39,117.50
1934	57,015.00	160.10	1,668.07	L-1,594.79	57,248.38	55,462.56	43,462.56	12,000.00	39,990.00
1935	33,598.13	224.39	1,038.49	L- 815.83	34,045.18	32,593.52	20,593.52	12,000.00	25,500.00
1936	31,561.88	97.87	581.82	182.45	32,424.02	30,849.42	18,849.42	12,000.00	33,000.00
1937	40,715.00	40.20	60.19	36.36	40,851.75	39,165.47	27,165.47	12,000.00	29,000.00
1938	30,543.75	54.50	53.12	L-3,878.86	26,772.51	25,471.12	13,471.12	12,000.00	13,500.00
1939	24,429.00	59.00	34.48	12.00	24,534.48	20,546.61	8,546.61	12,000.00	10,500.00
1940	26,471.25	25.50	—	17.00	26,513.75	24,680.06	12,680.06	12,000.00	12,000.00
Average	49,358.68	982.15	1,171.43	L- 120.91	51,391.34	48,836.72	35,359.44	13,477.27	34,929.26

¹—Pursuant to the consolidation agreement the constituent companies retained all receivables attributable to operations prior to July 1, 1929.

²—From 1926 to June 1, 1934 petitioner held approximately 60 shares of preferred stock of Los Angeles Gas & Electric Corporation. From 1927 to June 1, 1934 it likewise held 20 shares of preferred stock of Southern California Edison Company, Ltd.

U. S. Board of Tax Appeals, Div. 4 Docket 105054 Admitted
in Evidence Sep 24 1941 Petitioner's Exhibit Two.

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Petitioner's Exhibit Three
DAILY JOURNAL COMPANY
Balance Sheets as of December 31, 1927-1940

ASSETS	Dec. 31 1927	Dec. 31 1928	Dec. 31 1929	Dec. 31 1930	Dec. 31 1931	Dec. 31 1932	Dec. 31 1933	Dec. 31 1934	Dec. 31 1935	Dec. 31 1936	Dec. 31 1937	Dec. 31 1938	Dec. 31 1939	Dec. 31 1940
CASH	83,823.15	59,449.66	65,382.15	60,217.56	66,454.64	59,445.41	66,842.38	59,194.14	47,050.22	45,937.00	7,445.30	6,318.54	3,208.13	3,145.69
ACCOUNTS RECEIVABLE	18,065.96	18,702.16	10,557.88	60,345.46	59,958.35	44,298.32	73,661.88	93,983.91	100,076.68	92,472.96	87,760.81	76,358.19	77,595.69	80,515.69
NOTES RECEIVABLE						51,801.81	56,561.81	56,561.81	56,561.81	56,561.81	56,566.81	72,801.81	71,000.00	70,500.00
AUTO	1,188.35	792.24	1,584.46	1.00	1.00	967.54	645.08	322.62	1.00					
PLANT (net)	8,944.17	5,375.24												
IMPROVEMENTS & LEASEHOLD		3,357.29	5,138.92	1,181.11		5,717.41	37,027.41	37,187.28	37,310.48	37,385.01	37,455.23	37,521.14	37,521.14	37,521.14
REAL ESTATE	5,800.00	5,848.13	6,109.82	6,165.16				37,248.88						
CAPITAL INVESTMENT		800.00	800.00											
DOUGLAS WILSON, Trustee		18,677.12			2,729.50									
WILSON HOLDING COMPANY	10,000.00	30,000.00	30,000.00	30,000.00	30,000.00				(4,318.86)	(2,318.83)	(1,461.79)			
SECURITIES	26,120.76	26,212.50	635,843.61	650,724.90	638,401.86	617,004.45	582,585.73	564,120.78	(564,025.50)	(563,930.22)	(564,888.96)	560,936.55	562,775.30	562,757.80
FOUNDATION FUND	20.00	40.00	50.00											
BUILDING & LOAN		1,767.50	2,269.25											
ADJUSTMENT ACCOUNT		1,749.75												
BOOK ACCOUNTS	28,307.27	19,752.03												
GOODWILL	12,500.00	12,500.00												
TOTAL ASSETS—	<u>194,769.66</u>	<u>205,023.62</u>	<u>757,736.09</u>	<u>808,835.19</u>	<u>503,262.76</u>	<u>810,544.94</u>	<u>817,484.16</u>	<u>815,751.00</u>	<u>807,344.52</u>	<u>797,748.79</u>	<u>754,112.11</u>	<u>753,936.23</u>	<u>752,100.26</u>	<u>754,440.32</u>
LIABILITIES and CAPITAL														
ACCOUNTS PAYABLE			1,934.25	54,939.97	54,339.97	54,205.72	52,205.72			83.35	2,253.70	2,106.70	1,601.70	1,061.70
NOTES PAYABLE								47,000.00	43,500.00	47,972.50	4,000.00	4,000.00	2,000.00	4,200.00
ADJUSTMENT ACCOUNT	3,352.89													
RESERVE FOR DEPRECIATION			4,005.31											
CAPITAL STOCK	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	50,000.00	200,000.00	200,000.00	200,000.00	200,000.00	200,000.00	200,000.00	200,000.00	200,000.00
Preferred														
Common														
SPECIAL RESERVE	37,274.04	37,187.19	36,762.19							1,500.00		25.00		
PROFITS IN SUSPENSE	28,307.27	19,752.03												
SURPLUS	75,835.46	98,084.40	117,734.34	156,395.22	151,622.79	159,039.22	17,978.41	21,451.00	16,544.52	892.94	558.41	504.53	1,198.56	1,878.62
SURPLUS BY APPRECIATION			547,300.00	547,300.00	547,300.00	547,300.00	547,300.00	547,300.00	547,300.00	547,300.00	547,300.00	547,300.00	547,300.00	547,300.00
TOTAL—	<u>194,769.66</u>	<u>205,023.62</u>	<u>757,736.09</u>	<u>808,835.19</u>	<u>803,262.76</u>	<u>810,544.94</u>	<u>817,484.16</u>	<u>815,751.00</u>	<u>807,344.52</u>	<u>797,748.79</u>	<u>754,112.11</u>	<u>753,936.23</u>	<u>752,100.26</u>	<u>754,440.32</u>

U. S. Board of Tax Appeals Div. 4 Docket 105054 Admitted
in Evidence Sep 24 1941 Petitioner's Exhibit Three.

Explanation of Items on Petitioner's Exhibit Three

1. Douglas Wilson, Trustee

This item appearing on the balance sheets of 1928 and 1931 represents advances to Douglas Wilson for the benefit of Douglas Wilson and other stockholders.

2. Wilson Holding Co.

This item appearing on the balance sheets of 1927, 1928, 1929, 1930 and 1931 represents in part advances to that company, and in part advances assumed by that company. The Wilson Holding Co. was a holding corporation owning real estate in Los Angeles County. The stock ownership of the Wilson Holding Co. was distributed among the children of Warren Wilson, Deceased, the father of Douglas Wilson.

3. Real Estate

This item as it appears on the balance sheets of 1932-1940 consists largely of real estate which the petitioner has accepted in cancellation of the account previously owed to it by the Wilson Holding Co.

4. Substantially all of the amounts appearing as Accounts Receivable and Notes Receivable on the balance sheets of 1930-1940 represent advances to stockholders plus some advances to the Wilson Holding Co. to enable it to pay Los Angeles City and County Property Taxes.

[156]

Petitioner's Exhibit Five
CONSOLIDATED PRINTING & PUBLISHING CO.
 Operations subsequent to Consolidation

<u>Year Ending</u> <u>June 30</u>	<u>Gross</u> <u>Operating</u> <u>Income</u>	<u>Income Before</u> <u>Officers' Salaries</u> <u>or Income Taxes</u>	<u>Income</u> <u>Before</u> <u>Income Taxes</u>	<u>Officers'</u> <u>Salaries¹</u>	<u>Dividends Charged to Surplus²</u>	
					<u>"Class A" Pfd.</u>	<u>"Class B" Pfd.</u>
						<u>Common</u>
1930	\$374,318.45	\$146,412.02	\$140,412.02	\$6,000.00	\$5,376.00	\$ 75,000.00
1931	414,315.82	183,907.52	177,907.52	6,000.00	7,839.00	125,000.00
1932	428,625.71	190,740.99	184,740.99	6,000.00	5,848.50	100,000.00
1933	359,275.60	151,195.17	145,195.17	6,000.00	3,045.00	100,000.00
1934	421,722.72	162,079.14	156,079.14	6,000.00	591.86	100,000.00
1935	336,090.80	78,095.55	72,095.55	6,000.00	28.00	100,000.00
1936	304,371.77	69,105.97	63,105.27	6,000.00		
1937	310,191.78	68,757.70	62,757.70	6,000.00	35.00	50,000.00
1938	241,928.76	55,885.57	49,885.57	6,000.00	42.00	56,250.00
1939	278,505.38	54,062.49	48,062.49	6,000.00		50,000.00
1940	260,795.69	54,285.80	48,283.80	6,000.00		37,500.00
Average	339,103.86	110,411.45	104,411.45	6,000.00	2,073.21	72,159.09

1—Paid to Wm. W. Roe, secretary-treasurer.

2—Dividends were not invariably paid out in the year of declaration. Payment was always made, however, during the ensuing fiscal period, if not before.

U. S. Board of Tax Appeals Div. 4 Docket 105054 Admitted
 in Evidence Sep 24 1941 Petitioner's Exhibit Five.

PETITIONER'S EXHIBIT SIX
Consolidated Printing & Publishing Co.
Consolidated Balance Sheets as of June 30, 1930, 1937, 1938 and 1939

	June 30, 1930	June 30, 1937	June 30, 1938	June 30, 1939
<u>Assets</u>				
Cash	\$ 24,609.59	\$ 9,406.84	\$ 38,909.92	\$ 35,836.29
Accounts Receivable (net)	86,058.32	100,408.95	51,663.40	54,014.98
Prepaid Expenses	2,592.19	2,398.93	3,022.98	628.62
Investments	1,335.90	2,225.00	2,199.50	2,110.25
Real Estate		75,000.00	75,000.00	75,000.00
Machinery	\$ 45,407.15	\$ 58,207.48	\$ 58,207.48	\$ 60,991.22
Equipment	10,012.43	14,723.27	14,796.33	14,756.43
Furniture and Fixtures	6,399.74	11,128.74	11,493.88	12,040.59
Automobile	691.05			
Total	62,510.37	84,059.49	84,497.69	87,788.24
Less Reserve for Depreciation	5,912.04	54,899.85	62,378.01	69,856.17
	56,598.33	29,159.64	22,119.68	17,932.07
Organization Expense	2,441.12			
Good Will	856,250.00	856,250.00	856,250.00	856,250.00
Total Assets	<u>\$1,029,885.45</u>	<u>\$1,074,849.36</u>	<u>\$1,049,165.48</u>	<u>\$1,041,772.21</u>
<u>Liabilities and Capital</u>				
Accounts Payable	\$ 12,030.03	6,327.43	12,989.82	18,723.55
Notes Payable		16,378.92	6,192.55	4,189.51
Dividends Payable	25,000.00			
Reserve for Taxes		11,122.48	6,481.58	11,000.00
Reserve for Commissions		6,845.34		
Sundry Reserves		2,025.40	7,094.78	7,060.15
Deferred Credits			1,536.30	1,536.30
Total Liabilities	<u>\$ 39,249.43</u>	<u>\$ 42,699.57</u>	<u>\$ 34,295.03</u>	<u>\$ 42,509.51</u>
<u>Capital Stock</u>				
Class "A" Preferred	80,600.00	300.00	300.00	500,000.00
Class "B" Preferred	500,000.00	500,000.00	500,000.00	300.00
Common	350,000.00	350,000.00	350,000.00	350,000.00
Earned Surplus				
Surplus by Appreciation	969,562.81	155,599.79	138,320.45	122,712.70
		26,250.00		26,250.00
Total Liabilities and Capital	<u>\$1,029,885.45</u>	<u>\$1,074,849.36</u>	<u>\$1,049,165.48</u>	<u>\$1,041,772.21</u>

U. S. Board of Tax Appeals Div. 4 Docket 105054 Admitted
in Evidence Sep 24 1941 Petitioner's Exhibit Six.

[158]

[Title of Circuit Court of Appeals and Cause.]

PETITION FOR REVIEW OF DECISION OF THE
UNITED STATES BOARD OF TAX APPEALSTo the Honorable Judges of the United States Circuit
Court of Appeals, for the Ninth Circuit.

Daily Journal Company, petitioner, hereby petitions this court to review the decision of the United States Board of Tax Appeals heretofore entered in the above entitled Board of Tax Appeals proceeding on May 12, 1942. Petitioner respectfully represents: [159]

I

This petition is filed pursuant to Internal Revenue Code Sections 1140-1142, 26 U. S. C. A. Sections 1140-1142 (1940).

II

NATURE OF CONTROVERSY

The present controversy relates to the proper determination of petitioner's Federal income tax for the calendar years 1936, 1937 and 1938 as well as whether or not petitioner is liable for personal holding company surtaxes for the years 1937 and 1938.

Respondent determined income tax deficiencies due from petitioner for the years 1936, 1937 and 1938 as follows:

1936	\$ 80.85
1937	409.50
1938	500.70

and also determined personal holding company surtax deficiencies due from petitioner for the years 1937 and 1938 as follows:

1937	\$5,616.98
1938	9,638.38

The Board of Tax Appeals by its said decision sustained respondent in its determinations, and petitioner hereby petitions for a review of the said decision of the Board of Tax Appeals. [160]

III VENUE

Petitioner filed its Federal income tax returns for the years 1936, 1937 and 1938 with the Collector of Internal Revenue for the Sixth District of California. Accordingly, petitioner is petitioning for a review of the said decision of the Board of Tax Appeals by this Circuit Court of Appeals for the Ninth Circuit.

Wherefore, your petitioner prays that this court review the said decision of the Board of Tax Appeals, reverse the said decision of said Board, and direct the entry of a decision by said Board in favor of petitioner, determining that neither deficiencies in Federal income taxes for the years 1936, 1937 and 1938 nor deficiencies in personal holding company surtaxes for the years 1937 and 1938 are due from petitioner.

Dated: August 4th, 1942.

Respectfully submitted

(s) Dana Latham

1112 Title Guarantee Building
Los Angeles, California

Attorney for petitioner.

State of California

County of Los Angeles

Dana Latham, being first duly sworn on oath, deposes and says:

I am the attorney for the petitioner in this proceeding. I have read the foregoing petition and am familiar with the contents thereof. The allegations of fact contained therein are true to the best of my knowledge, information and belief. This petition is not filed for purposes of delay and I believe that petitioner is justly entitled to the relief sought.

(s) Dana Latham

Subscribed and sworn to before me this 4th day of August, 1942.

(Seal)

(s) Isobel V. Hughes

Notary Public in and for the County
of Los Angeles, State of California.

My commission expires November 4, 1944

[Stamped]: Filed Aug. 6, 1942. United States Board
of Tax Appeals.

[162]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING OF PETITION FOR REVIEW

To the Commissioner of Internal Revenue, Washington,
D. C.

You are hereby notified that Daily Journal Company, petitioner in the above entitled Board of Tax Appeals proceeding is petitioning the United States Circuit Court of Appeals for the Ninth Circuit to review the Board of Tax Appeals decision heretofore rendered in the above entitled Board of Tax Appeals case on May 12, 1942. The petition [163] for review copy of which is attached hereto, and this notice of filing of petition for review are hereby served upon you.

Dated: August 4th, 1942.

(s) Dana Latham

1112 Title Guarantee Building
Los Angeles, California

Attorney for Petitioner

Service of this notice, together with the petition for review herein referred to, is acknowledged this 6th day of August, 1942.

(s) J. P. Wenchel,

J. P. WENCHEL, Chief Counsel
Bureau of Internal Revenue

By.....

[Stamped]: Filed Aug. 6, 1942. United States Board
of Tax Appeals.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON
APPEAL AND STATEMENT OF POINTS.

To B. D. Gamble, Clerk of the United States Board of
Tax Appeals, Washington, D. C.:

Petitioner in the above entitled proceeding hereby designates the following portions of the record, proceedings and evidence before the Board of Tax Appeals to be contained in the record on review before the Circuit Court of Appeals for the Ninth Circuit:

(1) Docket entries. [165]

(2) Petition and amended petition filed by petitioner with the Board of Tax Appeals.

(3) Answer to petition and answer to amended petition filed by respondent with the Board of Tax Appeals.

(4) Findings of fact and memorandum opinion of the Board of Tax Appeals.

(5) Decision of the Board of Tax Appeals.

(6) Deposition of Douglas W. Wilson as introduced in evidence at the hearing before the Board of Tax Appeals excluding therefrom Exhibits "B", "C" and "D".

(7) Rulings on respondent's objections with respect to Douglas W. Wilson's deposition.

The following objections by respondent to questions asked by petitioner of Douglas W. Wilson on his deposition were sustained by the Board of Tax Appeals:

1. Respondent's objection on page 8 of deposition (Tr.).

2. Respondent's first objection on page 9 of deposition (Tr.).

3. Respondent's first objection on page 17 of deposition (Tr.). [166]

The other objections by respondent to questions asked by petitioner of Douglas W. Wilson on his deposition were overruled.

(8) The following Exhibits introduced in evidence by petitioner at the hearing before the Board of Tax Appeals:

1. Petitioner's Exhibit "1".
2. Petitioner's Exhibit "2".
3. Petitioner's Exhibit 3.
4. Petitioner's Exhibit "5".
5. Petitioner's Exhibit 6.

(9) The following stipulation entered into by petitioner and respondent regarding the value of the services rendered by Douglas W. Wilson.

"Mr. Latham (for petitioner): Now, I might state that I have this to suggest with respect to that: A reasonable value of the services rendered by Douglas W. Wilson during the calendar years 1936, 1937 and 1938, as president of Consolidated Printing and Publishing Company, was not less than \$12,000 per year. In other words, had such a salary been paid during said years to Douglas W. Wilson by Consolidated Printing and Publishing Company, respondent would not contend that such a salary was excessive. In other words, what I am trying to do is indicate that we are in agreement except for the [167] fact that the salary was paid by a company other than Consolidated. Is that a correct statement of your position, Mr. Tonjes?

Mr. Tonjes (for respondent): If your Honor please, I agree to the first portion of that, but as to what the respondent would do under any given circumstances I am not prepared to admit.

Mr. Latham: I didn't intend to commit you.

Mr. Tonjes: I will admit that the services rendered by Douglas W. Wilson to the Consolidated Company were reasonably worth \$12,000 a year. I think that is the same thing that Mr. Latham said." (B. T. A. Tr. 33-34)

(10) The petition for review of decision of the Board of Tax Appeals and notice of filing of petition for review, together with proof of service of said petition and said notice of filing petition.

(11) This designation of contents of record on appeal and statement of points, together with proof of service thereof.

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY.

(1) The Board of Tax Appeals erred in entering decision for respondent. [168]

(2) The Board of Tax Appeals erred in failing to enter a decision for petitioner finding that petitioner neither was subject to any income tax deficiencies for the years 1936, 1937 or 1938, nor was subject to any personal holding company surtax deficiencies for the years 1937 or 1938.

(3) The Board of Tax Appeals erred in failing to find or conclude that during the years 1936, 1937 and 1938 petitioner was carrying on the business of managing and operating Consolidated Printing and Publishing Company.

(4) The Board of Tax Appeals erred in failing to find or to conclude that the \$12,000.00 annual salary paid by petitioner to Douglas W. Wilson in each of the years 1936, 1937 and 1938 was a reasonable and necessary busi-

ness expense within the meaning of the language of Section 23(a)(1) of the Revenue Acts of 1936 and 1938 and was deductible in determining petitioner's taxable net income for said years.

(5) The Board of Tax Appeals erred in sustaining respondent's first objection on page 17 of the deposition of Douglas W. Wilson (Tr.), namely, the objection to the following question asked by [169] petitioner of Douglas W. Wilson:

"Q. Why was that provision inserted in this contract between the Daily Journal Company and the Legal Publishing Company?"

Dated: August 7th, 1942.

Respectfully submitted,

DANA LATHAM

DANA LATHAM

1112 Title Guarantee Building

411 West Fifth Street

Los Angeles, California

Attorney for Petitioner

[Stamped]: Filed Aug. 17, 1942. United States Board of Tax Appeals.

[170]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING OF DESIGNATION OF CONTENTS OF RECORD ON APPEAL AND STATEMENT OF POINTS.

To the Commissioner of Internal Revenue, Washington,
D. C.:

You are hereby notified that Daily Journal Company, petitioner in the above entitled Board of Tax Appeals proceeding, is filing with the Clerk of the Board of Tax Appeals petitioner's designation of contents of record on appeal and statement of points. The said designation of contents of [171] record on appeal and statement of points, a copy of which is attached hereto, together with this notice of filing of the same, are hereby served upon you.

Dated: August 7th, 1942.

DANA LATHAM

DANA LATHAM

1112 Title Guarantee Building

411 West Fifth Street

Los Angeles, California

Attorney for Petitioner

Service of this notice, together with petitioner's designation of contents of record on appeal and statement of points, herein referred to, is acknowledged this 17th day of August, 1942.

J. P. Wenchel W

J. P. WENCHEL, Chief Counsel

Bureau of Internal Revenue

[Stamped]: Filed Aug. 17, 1942. United States Board of Tax Appeals.

[172]

[Title of Board of Tax Appeals and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 171, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 31st day of August, 1942.

[Seal]

B. D. Gamble, Clerk,
United States Board of Tax Appeals.

[Endorsed]: Transcript of Record. Filed September 5, 1942. Paul P. O'Brien, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Circuit Court and Cause.]

STATEMENT OF POINTS AND DESIGNATION
OF PARTS OF RECORD TO BE PRINTED

To the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

I

STATEMENT OF POINTS

Petitioner respectfully states that upon the hearing on its petition for review herein, petitioner intends to rely upon all of the points specified in its "Designation of Contents of Record on Appeal and Statement of Points," heretofore filed with the Clerk of the United States Board of Tax Appeals, which points are incorporated herein by reference.

II

DESIGNATION OF PARTS OF RECORD TO BE
PRINTED

Petitioner respectfully submits that all of the record on review, as certified to you, will be necessary for the consideration of the points upon which petitioner intends to rely. Accordingly, petitioner respectfully requests you to have printed the entire record on review in this case.

Dana Latham

Dana Latham

1112 Title Guarantee Building

Los Angeles, California

Attorney for Petitioner

[Title of Circuit Court of Appeals and Cause.]

In the United States Circuit Court of Appeals for the Ninth Circuit

Daily Journal Company, a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. No. 10240

AFFIDAVIT OF SERVICE

State of California

County of Los Angeles—ss.

Marilene Mattraw, being sworn says:

That she is a citizen of the United States and a resident of the County of Los Angeles; that she is over the age of eighteen years and is not a party to the above-entitled action; and that her business address is 411 West Fifth Street, Los Angeles, California.

That on the 10th day of September, 1942, she served the Statement of Points and Designation of Parts of Record to be Printed to which this affidavit is attached by placing a true copy thereof in an envelope addressed to the "Chief Counsel, Bureau of Internal Revenue, Washington, D. C."; by then sealing the said envelope, and by then depositing the same, with postage prepaid, in the United States Post Office at Los Angeles, California; and that there is delivery service by United States mail at the place so addressed.

Marilene Mattraw

Subscribed and sworn to before me this 10th day of September, 1942.

[Seal]

Isobel V. Hughes

Notary Public in and for said
County and State

[Endorsed]: Filed Sep. 11, 1942. Paul P. O'Brien,
Clerk.

